

**I. EMERGENCY RULES**

**Children and Family Services**

Criminal Record Check, Sex Offender Prohibitions, and State Central Registry Disclosure  
(LAC 67:V. 6703, 6708, 6710, 6955, 6957, 6959, 6961, 7105, 7107, and 7111) ..... 3136

**Economic Development**

Louisiana Economic Development Corporation—Louisiana Seed Capital (LSC) Program and Seed Capital  
Program for the State Small Business Credit Initiative (SSBCI) Program  
(LAC 19:VII.Chapters 77 and 87) ..... 3149

Small Business Loan and Guaranty (SBL and G) Program and State Small Business Credit Initiative  
(SSBCI) Program (LAC 19:VII.Chapters 1 and 3)..... 3155

**Governor**

Division of Administration, Office of State Uniform Payroll—Temporary Approval Period and Transition  
to the New January-December Plan Year for Approved Statewide Vendors..... 3162

**Health and Hospitals**

Bureau of Health Services Financing—Adult Day Health Care—Minimum Licensing Standards  
(LAC 48:I.4203, 4207, 4227, 4245, and 4267) ..... 3163

CommunityCARE Program—Program Redesign (LAC 50:I.2901-2907, 2911-2913, 2917 and 2919)..... 3165

Direct Service Worker Registry (LAC 48:I.Chapter 92)..... 3169

Early and Periodic Screening, Diagnosis and Treatment—Substance Abuse Services  
(LAC 50:XV.Chapter 93) ..... 3171

Federally Qualified Health Centers—Fluoride Varnish Applications (LAC 50:XI.10301 and 10701) ..... 3172

Inpatient Hospital Services—Major Teaching Hospitals—Qualifying Criteria (LAC 50:V.1301-1309)..... 3173

Inpatient Hospital Services—Small Rural Hospitals—Low Income and Needy Care Collaboration  
(LAC 50:V.1125) ..... 3175

Inpatient Hospital Services—Small Rural Hospitals—Upper Payment Limit (LAC 50:V.1125 and 1127) ..... 3176

Intermediate Care Facilities for Persons with Developmental Disabilities—Reimbursement Rate  
Reduction (LAC 50:VII.32903) ..... 3177

Nursing Facilities—Reimbursement Methodology—Low Income and Needy Care Collaboration  
(LAC 50:II.20023) ..... 3178

Outpatient Hospital Services—Small Rural Hospitals—Low Income and Needy Care Collaboration  
(LAC 50:V.5311, 5511, 5711, 5911 and 6113)..... 3178

Personal Care Services—Long-Term—Policy Clarifications and Service Limit Reduction  
(LAC 50:XV.12901-12909 and 12911-12915)..... 3181

Pregnant Women Extended Services—Substance Abuse Screening and Intervention Services  
(LAC 50:XV.Chapter 163) ..... 3185

Professional Services Program—Fluoride Varnish Applications (LAC 50:IX.Chapter 9 and 15105)..... 3185

Outpatient Hospital Services—Small Rural Hospitals—Upper Payment Limit  
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)..... 3186

Rural Health Clinics—Fluoride Varnish Applications (LAC 50:XI.16301 and 16701) ..... 3187

Substance Abuse/Addictive Disorders Facilities—Minimum Licensing Standards—Physical Space  
Requirements Exemption (LAC 48:I.7403)..... 3188

Standards for Community Mental Health—Physical Space Requirements Exemption (LAC 48:III.537) ..... 3189

Office of Behavioral Health—Substance Abuse/Addictive Disorders Facilities—Minimum Licensing  
Standards—Physical Space Requirements Exemption (LAC 48:I.7403)..... 3188

Standards for Community Mental Health—Physical Space Requirements Exemption (LAC 48:III.537) ..... 3189

Office of Public Health—Added Use of Vital Records in Program Administration (LAC 48:V.11710)..... 3190

**Wildlife and Fisheries**

Wildlife and Fisheries Commission—2011-12 Oyster Season Closure ..... 3190

Basin Area Deer Hunting Seasons ..... 3190

Greater Amberjack Commercial Season Closure..... 3191

Delay of Oyster Season ..... 3191

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## II. RULES

### Education

Board of Elementary and Secondary Education—Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV.2318, 2319, 2325, and 2326) .....	3193
Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students (LAC 28: CXV.2321).....	3199
Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28: LXXXIII.409, 613, 3301, 3303, 3501, and 4313).....	3200
Bulletin 119—Louisiana School Transportation Specifications and Procedures (LAC 28: CXIII.907 and 2509).....	3203
Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Distance Learning (LAC 28: LXXIX.2523).....	3204
Bulletin 741—Louisiana Handbook for School Administrators—Red Tape Reduction Waiver and Local Empowerment Program (LAC 28: CXV.344).....	3205
Bulletin 746—Louisiana Standards for State Certification of School Personnel (LAC 28: CXXXI.233, 235, 237, 241, 243, 605, and 625).....	3208
Bulletin 1922—Compliance Monitoring Procedures (LAC 28: XCI.Chapters 1-5).....	3215
Minimum Foundation Program—Student Membership Definition (LAC 28: I.1107).....	3219
Regulatory Documents—Rulemaking (LAC 28: I.1303).....	3220

### Environmental Quality

Office of the Secretary, Legal Affairs Division—Criteria Pollutant Emissions Inventory (LAC 33: III.111, 311, 501, 605, 918, 919, 1513, 2115, 2139, 2141, 2153, and 5107)(AQ300).....	3220
Permit Term or Condition Referencing 40 CFR Part 63, Subpart DDDDD(LAC 33: III.501)(AQ323).....	3233
Solid Waste (LAC 33: VII.Chapters 1, 3, 4, 5, 7, 13, 15, 30, and 103)(SW053).....	3233

### Governor

Division of Administration, Facility Planning and Control— Louisiana Building Code (LAC 34: III.131) .....	3260
Motor Vehicle Commission—Automotive Industry (LAC 46: V.Chapters 1, 13, 15 and 18).....	3261

### Health and Hospitals

Bureau of Health Services Financing—Facility Need Review—Nursing Facilities (LAC 48: I.12511) .....	3264
Mental Health Rehabilitation Program—Termination of Parent/Family Intervention (Intensive) Services and Reimbursement Rate Reduction (LAC 50: XV.335, 501-505 and 901).....	3264
Multi-Systemic Therapy—Reimbursement Rate Reduction (LAC 50: XV.25701).....	3265
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).....	3266
Personal Care Services—Long-Term Reimbursement Rate Reduction (LAC 50: XV.12917) .....	3267
Pharmacy Benefits Management Program—Lock-In Program (LAC 50: XXIX.Chapter 3).....	3268
Pharmacy Benefits Management Program—Prescription Limit Reduction (LAC 50: XXIX.113) .....	3270
Pregnant Women Extended Services—Dental Services Reimbursement Rate Reduction (LAC 50: XV.16107).....	3270

### Natural Resources

Office of Conservation—Fees (LAC 43: XIX.701, 703, 705, and 707) .....	3271
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### Public Safety and Corrections

Board of Private Security Examiners—Security Officer—Definition; Registration; Insignia (LAC 46: LIX.101, 301, and 701).....	3274
Corrections Services—Administrative Remedy Procedure (LAC 22: I.325) .....	3275

## III. NOTICES OF INTENT

### Child and Family Services

Division of Programs, Child Welfare—Guardianship Subsidy Program (LAC 67: V.4101) .....	3280
Division of Programs, Economic Stability and Self-Sufficiency—Increasing Resource Limit for Households with Elderly and Disabled Members (LAC 67: III.1983).....	3283

### Economic Development

Office of the Secretary—Research and Development Tax Credit Program (LAC 13: I.2901, 2903, 2904, 2905 and 2911) .....	3285
Louisiana Economic Development Corporation—Louisiana Seed Capital (LSC) Program and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19: VII.Chapters 77 and 87) .....	3287
Small Business Loan and Guaranty (SBL and G) Program and State Small Business Credit Initiative (SSBCI) Program (LAC 19: VII.Chapters 1 and 3).....	3289

### Governor

Board of Architectural Examiners—Continuing Education (LAC 46: I.1315).....	3290
Governor’s Office of Homeland Security and Emergency Preparedness—Intrastate Mutual Aid Compact (LAC 55: XXII.Chapter 1 and 3) .....	3293

**Health and Hospitals**

Board of Nursing—Denial or Delay of Licensure (LAC 46:XLVII.3331)..... 3296  
Bureau of Health Services Financing—Adult Behavioral Health Services (LAC 50:XXXIII.Chapters 61-67) ..... 3299  
Behavioral Health Services—Statewide Management Organization (LAC 50:XXXIII.Chapters 1-9) ..... 3302  
Children’s Behavioral Health Services (LAC 50:XXXIII.Chapters 21-27)..... 3306  
Early and Periodic Screening, Diagnosis and Treatment—Psychological and Behavioral Services and  
School Based Mental Health Services (LAC 50:XV.Chapter 77, 9101, 9113, 9121, and 9133)..... 3308  
Home and Community-Based Behavioral—Health Services Waiver (LAC 50:XXXIII. 8101, 8103, 8301,  
8303, 8305, 8501, and 8701)..... 3310  
Pharmacy Benefits Management Program—Prescription Time Limits (LAC 50:XXIX.117)..... 3313  
Psychiatric Residential Treatment Facilities (LAC 50:XXXIII.Chapters 101-107) ..... 3314  
Psychiatric Residential Treatment Facilities—Minimum Licensing Standards (LAC 48:I.Chapter 90) ..... 3317  
School Based Behavioral Health Services (LAC 50:XXXIII.Chapters 41-47) ..... 3346  
Substance Abuse Services (LAC 50:XXXIII.Chapters 141-147)..... 3349  
Therapeutic Group Homes (LAC 50:XXXIII.Chapters 121-127)..... 3351  
Therapeutic Group Homes—Minimum Licensing Standards (LAC 48:I.Chapter 62)..... 3354

**Public Safety and Corrections**

Corrections Services—Louisiana Sex Offender Assessment Panels (LAC 22:I.109)..... 3379  
Sex Offender Payment for Electronic Monitoring (LAC 22:I.407) ..... 3381

**Treasury**

Registrars of Voters Employees’ Retirement System— Retirement System Trustees Election  
Procedures (LAC 58:XVII.Chapter 1)..... 3383

**IV. POTPOURRI**

**Environmental Quality**

Office of Environmental Assessment—Environmental Planning Division—2008 Lead (Pb) National  
Ambient Air Quality Standards (NAAQS) State Implementation Plan (SIP) Revisions ..... 3385

**Natural Resources**

Office of Conservation—Orphaned Oilfield Sites ..... 3385  
Office of Conservation—Environmental Division—Legal Notice—Pinnergy Ltd. .... 3385  
Office of the Secretary—Loran Coordinates ..... 3386

**V. INDEX ..... 0000**

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Children and Family Services Division of Programs

Criminal Record Check, Sex Offender Prohibitions, and State Central Registry Disclosure (LAC 67:V. 6703, 6708, 6710, 6955, 6957, 6959, 6961, 7105, 7107, 7111)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:V, Subpart 8, Chapter 67 Maternity Home, Chapter 69 Child Residential Care, concerning Class “B” regulations, and Chapter 71 Child Residential Care, concerning Class “A” regulations. This Emergency Rule shall be effective upon the DCFS secretary’s signature and shall remain in effect for a period of 120 days.

Amendments are being made to Subpart 8, Sections 6703, 6955, 6957, 6959, 6961, 7105, 7107, and 7111. Sections 6708 and 6710 are being added to Chapter 67 to address state central registry and criminal background check requirements for staff and potential employees of maternity homes. The amendments shall include regulations that require state central registry disclosure of any individual that has a justified (valid) determination of child abuse or neglect as specified in R.S. 46:1414.1 and require providers to make an influenza notice available to parents as specified in R.S. 46:1414. Pursuant to R.S. 14:81.4(A), (B)(2) and (4), R.S.14:81.4 (E)(1), 91.1(A)(2), 91.2(B), (C), and (D), R.S. 14:91.2(E), 91.3, and 91.4 amendments shall be added to prohibit any person that has been convicted of a sex offense as defined in R.S. 15:541 from owning, operating, or participating in the governance of a child residential facility or maternity home, prohibit any employer from knowingly employing a person convicted of a sex offense as defined in R.S. 15:541 to work in a child residential facility or maternity home, and require any owner/owners of a child residential facility or maternity home to provide documentation of a satisfactory criminal record check as required by R.S. 15:587.1.

Emergency action is necessary to prevent a threat to the health, safety, and welfare of children in licensed maternity homes and residential care. This will also ensure that the department is in compliance with the above mentioned laws.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Child Welfare

#### Subpart 8. Residential Licensing

#### Chapter 67. Maternity Home

#### §6703. Definition

A. ...

B. Additional Definitions

1. Definitions, as used in this Chapter:

\* \* \*

*Department* (DCFS)—Department of Children and Family Services formerly the Department of Social Services.

\* \* \*

*Individual Owner*—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of aquets and gains.

\* \* \*

*License*—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403.

*Licensing Section*—DCFS, Division of Programs, Licensing Section.

*Mandated Reporter*—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training and supervision of a child, such as a public or private school teacher, teacher’s aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of maternity home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under Article 603 of the Children’s Code or other applicable law.

*Owner or Operator*—the individual who exercises ownership or control over a child care facility, whether such ownership/control is direct or indirect.

*Ownership*—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

i. *Direct Ownership*—when a natural person is the immediate owner of a child care facility, i.e., exercising control personally rather than through a juridical person.

ii. *Indirect Ownership*—when the immediate owner is a juridical entity.

\* \* \*

*Reasonable Suspicion*—licensing section personnel has or acquires information containing specific and articulable facts indicating that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor in an investigation with a justified (valid) finding currently recorded on the state central registry.

*Staff*—all full or part-time paid or unpaid staff who perform services for the maternity home and have direct or indirect contact with children at the facility. Facility staff includes the director and any other employees of the facility

including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper.

*State Central Registry*—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFS.

\* \* \*

B.2. – B.2.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended LR 36:799, 835 (April 2010), repromulgated LR 36:1275 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:2521 (November 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

### §6708. General Provisions

#### A. Conditions for Participation in a Child-Related Business

1. Any owner/owners of a maternity home shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1. A copy of the criminal background check shall be submitted for each owner of a facility with an initial application, a change of ownership (CHOW) application, a change of location (CHOL) application, and/or an application for renewal for maternity home license. No person with a criminal conviction of a felony, or a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in 15:587.1, 14:2, or 15:541, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a maternity home. In addition, an owner, or director shall not have a conviction of, or plea of guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance.

- a. Individual ownership—individual and spouse.
- b. Partnership—all limited or general partners and managers as verified on the Secretary of State's website.
- c. Church owned, governmental entity, or university owned—any clergy and/or board member that is present in the facility during the hours of operation or when children are present.
- d. Corporation—any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:
  - i. has unsupervised access to the children in care at the facility;
  - ii. is present in the facility during hours of operation;
  - iii. makes decisions regarding the day-to-day operations of the facility;
  - iv. hires and/or fires maternity home staff including the director;

v. oversees maternity home staff and/or conducts personnel evaluations of the maternity home staff; and/or

vi. writes the facility's policies and procedures.

vii. If an owner has less than a 25 percent share in the business and does not perform one or more of the functions listed above a signed, notarized attestation form is required in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

2. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a maternity home as defined in R.S. 46:1403.

3. The owner or director of a maternity home shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises of the maternity home. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a maternity home shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the maternity home as required by R.S. 14:91.1.

#### B. State Central Registry

1. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the maternity home and shall be updated annually, at any time upon the request of DCFS, and within three business days of any owner receiving notice of a justified (valid) determination of child abuse or neglect.

a. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to DCFS licensing. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, DCFS shall not proceed with the licensure process. The owner shall request a risk evaluation assessment on the risk evaluation panel form (SCR 2) or shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time. DCFS will resume the licensure process when the owner provides written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children or the statement regarding their presence at the maternity home.

b. Within three business days of current owners receiving notice of a justified (valid) determination of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 46:1414.1. and submitted to the Licensing section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the owner

with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the maternity home, owner shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual chooses not to appeal the finding, the owner shall not be on the maternity home premises at any time.

ii. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that the owner does not pose a risk to children.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the owner shall not be on the maternity home premises at any time.

2. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

3. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section Management Staff as soon as possible, but no later than the close of business on the next business day.

4. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a maternity home facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

#### **§6710. Personnel Files**

A. Prior to employment, each prospective employee/volunteer shall complete a state central registry disclosure form prepared by the department as required in R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the maternity home and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff

receiving notice of a justified (valid) determination of child abuse or neglect.

1. The prospective paid staff (employee/volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

a. If a prospective staff (employee/volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee/volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

b. Individuals are eligible for employment if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

2. Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the maternity home premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

a. If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

b. Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee/volunteer) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee/volunteer) may be counted in child staff ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

c. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the staff (employee/volunteer) shall be terminated immediately.

d. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee/volunteer) shall continue to be under direct supervision at all times by another paid employee/volunteer of the facility who has not

disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

e. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

3. Any owner, operator, current or prospective employee/volunteer, or volunteer of a maternity home requesting licensure by DCFS and/or a maternity home licensed by DCFS is prohibited from working in a maternity home if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

4. No person, having any supervisory or other interaction with residents, shall be hired or on the premises of the facility until such person has submitted his or her fingerprints to the Louisiana Bureau of Criminal Identification and Information and it has been determined that such person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C). This shall include any employee/volunteer or non-employee who performs paid or unpaid work with the provider to include independent contractors, consultants, students, volunteers, trainees, or any other associated person, as defined in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

## **Chapter 69. Child Residential Care**

### **§6955. Procedures**

A. - A.2.e.v. ...

vi. a completed licensure inspection verifying substantial compliance with these standards;

vii. full license fee paid; and

viii. any owner/owners of a residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1.

A.3. - B.3.b. ...

C. Renewal of the License

1. The license shall be renewed on an annual basis.

2. The provider shall submit, at least 60 days prior to its license expiration date, a completed renewal application form and applicable fee. The following documentation must also be included:

a. Office of Fire Marshal approval for occupancy;

b. Office of Public Health, Sanitarian Services approval;

c. city fire department approval, if applicable;

d. copy of proof of current general liability and property insurance for facility;

e. copy of proof of insurance for vehicle(s); and

f. copy of a satisfactory criminal record check as required by R.S. 46:51.2 and 15:587.1 for any owner/owners.

3. Prior to renewing the CRF license, an on-site survey shall be conducted to assure compliance with all licensing laws and standards. If the CRF is found to be in compliance with the licensing laws and standards, and any other required statutes, laws, ordinances, or regulations, the license shall be renewed for a 12-month period.

4. In the event the annual licensing survey finds the CRF is non-compliant with any licensing laws or standards, or any other required statutes, ordinances or regulations but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the provider shall be required to submit a corrective action plan to the department for approval. The department shall specify the timeline for submitting the corrective action plan based on such non-compliance or deficiencies cited but no later than 10 days from the date of notification. The corrective action plan shall include a description of how the deficiency shall be corrected and the date by which correction(s) shall be completed. Failure to submit an approved corrective action plan timely shall be grounds for non-renewal.

5. If it is determined that such noncompliance or deficiencies have not been corrected prior to the expiration of the license, the department may issue an extension of the license not to exceed 60 days.

6. When it is determined by the department that such noncompliance or deficiencies have been corrected, a license will be issued for a period not to exceed 12 months.

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

D.- D.2.e. ...

f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;

g. any act of fraud such as falsifying or altering documents required for licensure;

h. permit an individual with a justified (valid) finding of child/abuse neglect to be on the premises without being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry prior to a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children; or to knowingly permit an individual who has not disclosed that their name appears with a justified (valid) finding on the state central registry to be on the premises at any time, whether supervised or not supervised;

i. permit an individual, whether supervised or not supervised to be on the child residential premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the or nolo contendere to, any offense included in 15:587.1, 14:2, 15:541, or any offense involving a juvenile victim;

j. have a criminal background, as evidenced by the continued employment or ownership of or by any individual (paid or unpaid staff) convicted of, or a plea of guilty or nolo

contendere to, any offense included in 15:587.1, 14:2, 15:541, or any offense involving a juvenile victim;

k. own a child residential business and have been convicted of or have pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense;

l. have knowledge that a convicted sex offender is on the premises of the child care facility and fail to notify law enforcement and licensing management staff immediately upon receipt of such knowledge; or

m. have knowledge that a convicted sex offender is physically present within 1,000 feet of the child care facility and fail to notify law enforcement immediately upon receipt of such knowledge.

E. - F.1.d. ...

G. Disqualification from Application

1. Definitions, as used in Section 6955.G:

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*Department*—Repealed.

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*Facility*—Repealed.

*License*—any license issued by the department to operate any child residential facility or child-placing agency as defined in R.S. 46:1403.

\*\*\*

G.2. - G.2.d. ...

H. - H.2.d. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S. 46:1410 et seq., R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended LR 36:331 (February 2010), LR 36:836, 842 (April 2010), repromulgated LR 36:1032 (May 2010), repromulgated LR 36:1277 (June 2010), amended by the Department of Children and Family Services, Child Welfare Section, LR 36:1463 (July 2010), amended by the Department of Children and Family Services, Child Welfare Section and Economic Stability and Self-Sufficiency Section, LR 36:2522 (November 2010), repromulgated LR 36:2838 (December 2010), amended by the Department of Children and family Services, Division of Programs, Licensing Section, LR 37:

**§6957. Definitions**

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*Department (DCFS)*—Department of Children and Family Services formerly the Department of Social Services.

\*\*\*

*Documentation*—written evidence or proof, signed and dated by the parties involved (director, parents, staff, etc.), and available for review.

\*\*\*

*Facility*—any place, program, facility or agency as defined in R.S. 46:1403 to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

\*\*\*

*Individual Owner*—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the

business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of acquets and gains.

\*\*\*

*Licensing Section*—DCFS, Division of Programs, Licensing Section.

\*\*\*

*Mandated Reporter*—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training and supervision of a child, such as a public or private school teacher, teacher’s aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under Article 603 of the Children’s Code or other applicable law.

*Owner or Operator*—the individual who exercises ownership or control over a child care facility, whether such ownership/control is direct or indirect.

*Ownership*—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

1. *Direct Ownership*—when a natural person is the immediate owner of a child care facility, i.e., exercising control personally rather than through a juridical person.

2. *Indirect Ownership*—when the immediate owner is a juridical entity.

\*\*\*

*Reasonable Suspicion*—licensing section personnel has or acquires information containing specific and articulable facts indicating that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor in an investigation with a justified (valid) finding currently recorded on the state central registry.

\*\*\*

*Safety Interventions*—an immediate time limited plan to control the factor(s) that may result in an immediate or impending serious injury/harm to a child(ren).

\*\*\*

*Staff*—all full or part-time paid or unpaid staff who perform services for the child residential facility and have direct or indirect contact with children at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper excluding extra-curricular personnel.

*State Central Registry*—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFS.

\*\*\*

*Unlicensed Operation*—operation of any child residential facility, at any location, without a valid, current license issued by the department.



AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2742 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1619 (August 2009), amended by the Department of Children and Family Services, Division of Program, Licensing Sections, LR 37:

### **§6959. Administration and Organization**

A. - B.2. ...

3. Any owner/owners of a child residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1. A copy of the criminal background check shall be submitted for each owner of a facility with an initial application, a change of ownership (CHOW) application, a change of location (CHOL) application, and/or an application for renewal for a child residential license. No person with a criminal conviction of a felony, or a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in 15:587.1, 14:2, or 15:541, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a child residential facility. In addition, an owner, or director shall not have a conviction of, or plea of guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance.

- a. Individual ownership—individual and spouse.
- b. Partnership—all limited or general partners and managers as verified on the Secretary of state's website.
- c. Church owned, governmental entity, or university owned—any clergy and/or board member that is present in the facility during the hours of operation or when children are present.
- d. Corporation—any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:
  - i. has unsupervised access to the children in care at the facility;
  - ii. is present in the facility during hours of operation;
  - iii. makes decisions regarding the day-to-day operations of the facility;
  - iv. hires and/or fires child care staff including the director;
  - v. oversees child residential staff and/or conducts personnel evaluations of the child care staff; and/or
  - vi. writes the facility's policies and procedures.
- vii. If an owner has less than a 25 percent share in the business and does not perform one or more of the functions listed above a signed, notarized attestation form is required in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

4. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a child residential facility as defined in R.S. 46:1403.

5. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises of the child residential facility. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the child day care facility as required by R.S. 14:91.1.

6. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any owner receiving notice of a justified (valid) determination of child abuse or neglect.

a. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to DCFS licensing. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, DCFS shall not proceed with the licensure process. The owner shall request a risk evaluation assessment on the risk evaluation panel form (SCR 2) or shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time. DCFS will resume the licensure process when the owner provides written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children or the statement regarding their presence at the child residential facility.

b. Within three business days of current owners receiving notice of a justified (valid) determination of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 46:1414.1. and submitted to the Licensing section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the owner with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the child residential facility, owner shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual chooses not to appeal the finding, the owner shall not be on the child residential premises at any time.

ii. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that the owner does not pose a risk to children.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the owner shall not be on the child residential premises at any time.

7. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

8. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section Management Staff as soon as possible, but no later than the close of business on the next business day.

9. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a child residential facility licensing file shall be confidential and subject to the confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

10. In accordance with R.S. 46:1428 providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Children and Family Services and shall be made available to parents or legal guardians prior to November 1 of each year.

C. - O.1.c. ...

d. documentation of a satisfactory criminal record check from Louisiana State Police as required by R.S. 46:51.2. This check shall be obtained prior to the individual being present in the child residential facility. No person who has been convicted of, or pled guilty or nolo contendere to, any offense included in R.S. 15:587.1, R.S. 14:2, R.S. 15:541 or any offense involving a juvenile victim, shall be eligible to own, operate, and/or be present in any capacity in

any licensed child residential facility. For any owner or operator, a clear criminal background check in accordance with R.S. 46:51.2 shall be obtained prior to the issuance of a license or approval of a change of ownership. In addition, neither an owner, nor a director shall have a conviction of, or pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense;

i. any employee who is convicted of or has pled nolo contendere to any crime listed in R.S. 15:587.1(c) shall not continue employment after such conviction or nolo contendere plea;

e. evidence of applicable professional credentials/certifications according to state law;

f. annual performance evaluations;

g. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility;

h. employee's starting and termination dates.

i. prior to employment, each prospective employee shall complete a state central registry disclosure form prepared by the department as required in RS 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff receiving notice of a justified (valid) determination of child abuse or neglect.

i. The prospective paid staff (employee) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

(a). If a prospective staff (employee) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(b). Individuals are eligible for employment if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

ii. Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Staff will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1305 or shall be terminated immediately.

(a). If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

(b). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person

shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee) may be counted in child staff ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

(c). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the staff (employee) shall be terminated immediately.

(d). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

(e). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

iii. Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

O.2. - Q. ...

#### R. Facility, Staff, Client and Records Accessibility

1. The provider shall allow representatives of DCFS access to the facility, the children, and all files and records at any time during hours of operation and/or anytime a child is present. DCFS staff shall be allowed to interview any staff member or child as determined necessary by DCFS. DCFS representatives shall be admitted immediately and without delay, and shall be given free access to all areas of a facility, including its grounds. If any portion of a facility is set aside for private use by the facility's owner, DCFS representatives shall be permitted to verify that no child is present in that portion and that the private areas are inaccessible to children. If as a result of a preliminary investigation, or other DCFS inspection, DCFS determines that one or more safety issues exists, DCFS may require implementation of a safety intervention plan. In such a case, the provider shall

cooperate and adhere to any written safety intervention as determined, enumerated, and mandated by DCFS staff.

AUTHORITY NOTE: Promulgated in accordance with R.S.

36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2743 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1620 (August 2009), amended LR 36:331 (February 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

### §6961. Human Resources

A. - E.2. ...

3. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;

4. aware of and briefed on any special needs or problems of clients;

5. have a criminal background check as required in R.S. 15:587.1 and R.S. 46:51.2 and as outlined in Section 6959.O.1.d; and

6. have a completed state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46:1414.1.

a. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff and/or volunteer receiving notice of a justified (valid) determination of child abuse or neglect.

b. The prospective non-paid staff (volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

i. If a prospective staff non-paid (volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

ii. Individuals are eligible for volunteer services if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

c. Current volunteers receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Volunteers will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305 or shall be terminated immediately.

i. If the volunteer will no longer be employed at or provide volunteer services at the facility, the provider shall submit a signed, dated statement indicating that the volunteer will not be on the premises of the facility at any time.

ii. Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued volunteer services, the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the volunteer is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the non-paid staff (volunteer) may be counted in child staff ratio. Under no circumstances may the volunteer with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

iii. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the non-paid staff (volunteer) shall be terminated immediately.

iv. If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the non-paid staff (volunteer) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

v. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

d. Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

F. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1410 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1570 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2745 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR

35:1622 (August 2009), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

## Chapter 71. Child Residential Care

### §7105. Definitions

A. As used in this Chapter:

\* \* \*

*Department (DCFS)*—Department of Children and Family Services formerly the Department of Social Services.

\* \* \*

*Documentation*—written evidence or proof, signed and dated by the parties involved (director, parents, staff, etc.), and available for review.

\* \* \*

*Facility*—any place, program, facility or agency as defined in R.S. 46:1403 to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

\* \* \*

*Individual Owner*—a natural person who directly owns a facility without setting up or registering a corporation, LLC, partnership, church, university or governmental entity. The spouse of a married owner is also an owner unless the business is the separate property of the licensee acquired before his/her marriage, acquired through authentic act of sale from spouse of his/her undivided interest; or acquired via a judicial termination of the community of aquets and gains.

\* \* \*

*License*—any license issued by the Department of Children and Family Services to operate any child residential facility as defined in R.S. 46:1403.

*Licensing Section*—DCFS, Division of Programs, Licensing Section.

*Mandated Reporter*—professionals who may work with children in the course of their professional duties and who consequently are required to report all suspected cases of child abuse and neglect. This includes any person who provides training and supervision of a child, such as a public or private school teacher, teacher's aide, instructional aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institution staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, any individual who provides such services to a child, or any other person made a mandatory reporter under Article 603 of the Children's Code or other applicable law.

*Medication*—all drugs administered internally and/or externally, whether over-the-counter or prescribed.

\* \* \*

*Owner or Operator*—the individual who exercises ownership or control over a child residential care facility, whether such ownership/control is direct or indirect.

*Ownership*—the right that confers on a person direct, immediate, and exclusive authority over a thing. The owner of a thing may use, enjoy, and dispose of it within the limits and under the conditions established by law. Refers to direct or indirect ownership.

a. *Direct Ownership* - when a natural person is the immediate owner of a child residential care facility, i.e., exercising control personally rather than through a juridical person.

b. *Indirect Ownership* - when the immediate owner is a juridical entity.

\* \* \*

*Reasonable Suspicion*—Licensing section personnel has or acquires information containing specific and articulable facts indicating that an owner, operator, or current or potential employee or volunteer has been investigated and determined to be the perpetrator of abuse or neglect against a minor in an investigation with a justified (valid) finding currently recorded on the state central registry.

\* \* \*

*Safety Interventions*—an immediate time limited plan to control the factor(s) that may result in an immediate or impending serious injury/harm to a child(ren).

\* \* \*

*Staff*—all full or part-time paid or unpaid staff who perform services for the child residential facility and have direct or indirect contact with children at the facility. Facility staff includes the director and any other employees of the facility including, but not limited to the cook, housekeeper, driver, custodian, secretary, and bookkeeper excluding extra-curricular personnel.

*State Central Registry*—repository that identifies any individual reported to have a justified (valid) finding of abuse or neglect of a child or children by DCFCS.

\* \* \*

*Unlicensed Operation*—operation of any child residential facility, at any location, without a valid, current license issued by the department.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:805 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

### **§7107. Licensing Requirements**

A. - A.4. ...

5. Any owner/owners of a child residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1. A copy of the criminal background check shall be submitted for each owner of a facility with an initial application, a change of ownership (CHOW) application, a change of location (CHOL) application, and/or an application for renewal for a child residential license. No person with a criminal conviction of a felony, or a plea of guilty or nolo contendere of a felony, or plea of guilty or nolo contendere to any offense included in 15:587.1, 14:2, or 15:541, or any offense involving a juvenile victim, shall directly or indirectly own, operate, or participate in the governance of a child residential facility. In addition, an owner, or director shall not have a conviction of, or plea of guilty or nolo contender to any crime in which an act of fraud or intent to defraud is an element of the offense. The following is a listing of individuals by organizational type who are required to submit documentation of a satisfactory criminal background clearance:

- a. Individual ownership – individual and spouse;
- b. Partnership – all limited or general partners and managers as verified on the Secretary of State’s website;
- c. Church owned, governmental entity, or university owned – any clergy and/or board member that is present in

the facility during the hours of operation or when children are present;

d. Corporation – any individual who has 25 percent or greater share in the business or any individual with less than a 25 percent share in the business and performs one or more of the following functions:

- i. has unsupervised access to the children in care at the facility;
- ii. is present in the facility during hours of operation;
- iii. makes decisions regarding the day-to-day operations of the facility;
- iv. hires and/or fires child care staff including the director;
- v. oversees child residential staff and/or conducts personnel evaluations of the child care staff; and/or
- vi. writes the facility’s policies and procedures.

vii. If an owner has less than a 25 percent share in the business and does not perform one or more of the functions listed above a signed, notarized attestation form is required in lieu of a criminal background clearance. This attestation form is a signed statement from each owner acknowledging that he/she has less than a 25 percent share in the business and that he/she does not perform one or more of the aforementioned functions as an owner.

6. Providers and child care staff shall not permit an individual convicted of a sex offense as defined in R.S. 15:541 to have physical access to a child residential facility as defined in R.S. 46:1403.

7. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel and the Licensing Section management staff if they have knowledge that a registered sex offender is on the premises of the child residential facility. The verbal report shall be followed by a written report to the Licensing Section within 24 hours. The owner or director of a child residential facility shall be required to call and notify law enforcement personnel if they have knowledge that a registered sex offender is within 1,000 feet of the child day care facility as required by R.S. 14:91.1.

B. - B.1.q. ...

- r. a floor sketch or drawing of the premises to be licensed;
- s. any other documentation or information required by the department for licensure; and
- t. any owner/owners of a child residential facility shall provide documentation of a satisfactory criminal record check, as required by R.S. 46:51.2 and 15:587.1.

B.2. - E.2.c. ...

- d. copy of proof of current general liability and property insurance for facility;
- e. copy of proof of insurance for vehicle(s); and
- f. copy of a criminal background clearance for all owners as required by R.S. 46:51.2 and 15:587.1.

3. - 6. ...

7. If it is determined that all areas of noncompliance or deficiencies have not been corrected prior to the expiration date of the extension, the department may revoke the license.

F. - G.2.e. ...

- f. failure to timely submit an application for renewal or to timely pay required fees;

- g. operating any unlicensed facility and/or program;
- h. permit an individual with a justified (valid) finding of child/abuse neglect to be on the premises without being directly supervised by another paid employee of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry prior to a determination by the Risk Evaluation Panel or Division of Administrative Law that the individual does not pose a risk to children; or to knowingly permit an individual who has not disclosed that their name appears with a justified (valid) finding on the state central registry to be on the premises at any time, whether supervised or not supervised;
- i. permit an individual, whether supervised or not supervised to be on the child residential premises with a ruling by the Risk Evaluation Panel that the individual poses a risk to children and the individual has not requested an appeal hearing by the or nolo contendere to, any offense included in 15:587.1, 14:2, 15:541, or any offense involving a juvenile victim;
- j. have a criminal background, as evidenced by the continued employment or ownership of or by any individual (paid or unpaid staff) convicted of, or a plea of guilty or nolo contendere to, any offense included in 15:587.1, 14:2, 15:541, or any offense involving a juvenile victim;
- k. own a child residential business and have been convicted of or have pled guilty or nolo contendere to any crime in which an act of fraud or intent to defraud is an element of the offense;
- l. have knowledge that a convicted sex offender is on the premises of the child care facility and fail to notify law enforcement and licensing management staff immediately upon receipt of such knowledge; or
- m. have knowledge that a convicted sex offender is physically present within 1,000 feet of the child care facility and fail to notify law enforcement immediately upon receipt of such knowledge.

G.3. - K.1.d. ...

L. State Central Registry

1. All owners shall complete, sign, and date the state central registry disclosure form (SCR 1) as required by R.S. 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any owner receiving notice of a justified (valid) determination of child abuse or neglect.

a. Prospective owners shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to DCFS licensing. If a prospective owner discloses that his or her name is currently recorded as a perpetrator on the state central registry, DCFS shall not proceed with the licensure process. The owner shall request a risk evaluation assessment on the risk evaluation panel form (SCR 2) or shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time. DCFS will resume the licensure process when the owner provides written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children or the statement regarding their presence at the child residential facility.

b. Within three business days of current owners receiving notice of a justified (valid) determination of child abuse and/or neglect, an updated state central registry disclosure form (SCR 1) shall be completed by the owner as required by R.S. 46:1414.1. and submitted to the Licensing section management staff. The owner will have 10 calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:I.305. If on-site at the facility and immediately upon the knowledge that a justified (valid) finding has been issued by DCFS, the owner shall be directly supervised by a paid staff (employee) of the facility, who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Under no circumstances may the owner with the justified finding be left alone and unsupervised with the children pending the disposition of the Risk Evaluation Panel or the Division of Administrative Law. If not on site at the child residential facility, owner shall submit a signed, dated statement that he or she will not be on the premises of the facility at any time.

i. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual chooses not to appeal the finding, the owner shall not be on the child residential premises at any time.

ii. If the Risk Evaluation Panel finds the owner does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the owner shall continue to be under direct supervision at all times by a paid staff (employee) of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that the owner does not pose a risk to children.

iii. If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the owner shall not be on the child residential premises at any time.

2. State central registry disclosure forms, documentation of any disposition of the Risk Evaluation Panel and, when applicable, the Division of Administrative Law ruling shall be maintained in accordance with current DCFS licensing requirements and shall be available for review by DCFS personnel during the facility's hours of operation. This information shall be kept on file for a minimum of one year from termination of the employee or volunteer from the facility.

3. Any information received or knowledge acquired that a current or prospective owner, operator, volunteer, employee, prospective volunteer, or prospective employee has falsified a state central registry disclosure form stating that they are not currently recorded as a perpetrator with a justified (valid) determination of abuse or neglect shall be reported in writing to Licensing Section Management Staff as soon as possible, but no later than the close of business on the next business day.

4. Any state central registry disclosure form, Risk Evaluation Panel finding, and Division of Administrative Law ruling that is maintained in a child residential facility licensing file shall be confidential and subject to the

confidentiality provisions of R.S. 46:56(F) pertaining to the investigations of abuse and neglect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477, R.S.46:1401-1424 and R.S. 46:1414.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:807 (April 2010), amended LR 36:843 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

#### **§7111. Provider Responsibilities**

A. - A.2.c. ...

d. The provider that utilizes volunteers shall be responsible for the actions of the volunteers. Volunteers shall be given a copy of their job description. Volunteers shall:

i. ...

ii. have a criminal background check as required in R.S. 15:587.1 and R.S. 46:51.2 and as outlined in Section 7111.A.5.d.ii; and

iii. have a completed state central registry disclosure form prepared by the department whether or not his/her name is currently recorded on the state central registry for a justified finding of abuse or neglect and he/she is the named perpetrator as required in R.S. 46.1414.1;

(a). This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff and/or volunteer receiving notice of a justified (valid) determination of child abuse or neglect.

(b). The prospective non-paid staff (volunteer) shall complete, sign, and date the state central registry disclosure form and submit the disclosure form to the owner or operator of the facility.

(i). If a prospective staff non-paid (volunteer) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for volunteer duties at that time due to the state central registry disclosure. The director will provide the prospective volunteer with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(ii). Individuals are eligible for volunteer services if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

(c). Current volunteers receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Volunteers will have ten calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

(i). If the volunteer will no longer be employed at or provide volunteer services at the facility, the provider shall submit a signed, dated statement indicating

that the volunteer will not be on the premises of the facility at any time.

(ii). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued volunteer services, the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the volunteer is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the non-paid staff (volunteer) may be counted in child staff ratio. Under no circumstances may the volunteer with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

(iii). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the non-paid staff (volunteer) shall be terminated immediately.

(iv). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the non-paid staff (volunteer) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

(v). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

(d). Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

2.d.iv. - 5.b. ...

c. Prior to employment, each prospective employee shall complete a state central registry disclosure form prepared by the department as required in RS 46:1414.1. This information shall be reported prior to the individual being on the premises of the child residential facility and shall be updated annually, at any time upon the request of DCFS, and within three business days of any staff receiving notice of a justified (valid) determination of child abuse or neglect.

i. The prospective paid staff (employee) shall complete, sign, and date the state central registry disclosure

form and submit the disclosure form to the owner or operator of the facility.

(a). If a prospective staff (employee) discloses that his or her name is currently recorded as a perpetrator on the state central registry, the director shall inform the applicant they will not be considered for employment at that time due to the state central registry disclosure. The director will provide the prospective employee with the risk evaluation panel form (SCR 2) so that a risk assessment evaluation may be requested.

(b). Individuals are eligible for employment if and when they provide written documentation from the Risk Evaluation Panel or the Division of Administrative Law noting that they do not pose a risk to children.

ii. Current staff receiving notice of a justified (valid) determination of child abuse and/or neglect shall complete an updated state central registry disclosure form (SCR 1) noting the existence of the justified (valid) determination as required by R.S. 46:1414.1. This updated SCR 1 shall be submitted to the licensing section management staff within three business days or upon being on the child residential premises, whichever is sooner. Staff will have ten calendar days from completion of the state central registry disclosure form to request a risk assessment evaluation in accordance with LAC 67:1.305 or shall be terminated immediately.

(a). If the staff person will no longer be employed at the facility, the provider shall submit a signed, dated statement indicating that the staff will not be on the premises of the facility at any time.

(b). Immediately upon the receipt of the knowledge that a justified (valid) finding has been issued by DCFS and as a condition of continued employment the staff person shall be directly supervised by a paid staff (employee) of the facility who has not disclosed that their name appears with a justified (valid) finding on the state central registry. Provider shall submit a written statement to licensing section management staff acknowledging that the staff is under continuous direct supervision by a paid staff who has not disclosed that their name appears with a justified (valid) finding on the state central registry. When these conditions are met, the staff (employee) may be counted in child staff ratio. Under no circumstances may the staff person with the justified finding be left alone and unsupervised with the children pending the disposition by the Risk Evaluation Panel or the Division of Administrative Law that the staff person does not pose a risk to children.

(c). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual chooses not to appeal the finding, the staff (employee) shall be terminated immediately.

(d). If the Risk Evaluation Panel finds the individual does pose a risk to children and the individual appeals the finding to the Division of Administrative Law within the required timeframe, the staff (employee) shall continue to be under direct supervision at all times by another paid employee of the facility who has not disclosed that they have a justified finding on the state central registry

until a ruling is made by the Division of Administrative Law that they do not pose a risk to children. Supervision may end upon receipt of the ruling from the Division of Administrative Law that they do not pose a risk to children.

(e). If the Division of Administrative Law upholds the Risk Evaluation Panel finding that the individual does pose a risk to children, the individual shall be terminated immediately.

iii. Any owner, operator, current or prospective employee, or volunteer of a child residential facility requesting licensure by DCFS and/or a child residential facility licensed by DCFS is prohibited from working in a child residential facility if the individual discloses, or information is known or received by DCFS, that the individual's name is recorded on the state central registry (SCR) as a perpetrator for a justified (valid) finding of abuse or neglect of a child, unless there is a finding by the Risk Evaluation Panel or a ruling by the Division of Administrative Law that the individual does not pose a risk to children.

5.d.- 5.d.i. ...

ii. No person, having any supervisory or other interaction with residents, shall be hired or on the premises of the facility until such person has submitted his or her fingerprints to the Louisiana Bureau of Criminal Identification and Information and it has been determined that such person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C). This shall include any employee or non-employee who performs paid or unpaid work with the provider to include independent contractors, consultants, students, volunteers, trainees, or any other associated person, as defined in these rules.

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

#### H. Influenza Notice to Parents

1. In accordance with R.S. 46:1428 providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Children and Family Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1424.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 37:

Ruth Johnson  
Secretary

1111#021



## DECLARATION OF EMERGENCY

### Department of Economic Development Louisiana Economic Development Corporation

Louisiana Seed Capital (LSC) Program and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.Chapters 77 and 87)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:953(B), et seq., are amending, supplementing, expanding portions of and readopting the rules of the Louisiana Seed Capital (LSC) Program, provided in LAC 19:VII.Chapter 77, and creating the new Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program, LAC 19:VII.Chapter 87, under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312. This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective November 20, 2011, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a final Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and expand certain provisions of and to readopt the rules regarding the Louisiana Seed Capital (LSC) Program and to create the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to these rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will encourage the formation of Louisiana-based venture capital funds intended to provide investment capital to create and grow start-up and early-stage Louisiana businesses. These programs will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. This new program will utilize SSBCI funds to make seed-stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. These programs will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of business concerns in Louisiana; will help small businesses grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities in all areas of our State. These programs will further help secure the creation or retention of jobs created by businesses in Louisiana that require state assistance in order to start,

maintain or expand their operations, and/or increase their capital investment in Louisiana. Without this Emergency Rule the public welfare may be harmed as the result of the loss of small business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

### Title 19

## CORPORATIONS AND BUSINESS

### Part VII. Louisiana Economic Development Corporation

#### Subpart 11. Louisiana Seed Capital Program

#### Chapter 77. Louisiana Seed Capital Program

##### §7701. Purpose

A. The purpose of this Louisiana Economic Development Corporation (LEDC) program is to encourage the formation of Louisiana-based Seed Capital Funds (venture capital funds for start-up and early-stage businesses). This program is intended to provide investment capital to create and grow start-up and early-stage businesses. This program will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. Funding under this program shall be limited to those qualified organizations who agree to invest such funds exclusively in companies based in Louisiana for the purpose of financing any business purpose or process, technique, product, or device which is or may be exploitable commercially, which has advanced beyond the theoretical state, and which is capable of being or has been reduced to practice without regard to whether a patent has or could be granted. This program is not intended for retail or professional services.

B. The LEDC will make the decision as to whether it will invest in the venture capital fund; and the venture capital fund will make the investment decision in eligible individual businesses.

C. The LEDC will provide high-level monitoring of aggregate performance of its portfolio, with monitoring of a small amount of data on each venture capital fund investment; and the venture capital fund will actively monitor each individual business investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR

##### §7703. Definitions

*Board*—Board of Directors of Louisiana Economic Development Corporation.

*Co-Investment*—an investment in which financial investors take part with each other and act jointly by uniting or combining together.

*Corporation*—Louisiana Economic Development Corporation.

*LED*—Louisiana Department of Economic Development.

*LEDC*—Louisiana Economic Development Corporation.

*Match Investment*—an investment in which a financial investor provides or combines additional funds to equal, meet or complement funds provided by another investor or other investors.

*Seed Capital* (for the purposes of this program)—

1. a dollar amount of not less than \$25,000 of capital provided to an inventor or entrepreneur to prove a concept and to qualify for start-up capital, which may involve product development and market research, as well as building a management team and developing a business plan, if the initial steps are successful;

2. research and development financing to finance product development for start-up as well as early-stage companies (which may include a company that may already be in business for three years or less);

3. start-up or early-stage financing to companies completing product development and initial marketing which companies may be in the process of organizing or they may already be in business for three years or less, but have sold their product commercially; or

4. first-stage or early-stage financing to companies that have expended their initial capital and require funds to initiate full-scale manufacturing and sales, for costs of inventory, equipment, expansion, modernization, and for working capital purposes.

*Venture Capital Fund*—also referred to herein as a *Seed Capital Fund*, or the *applicant organization*; a fund that makes and manages a portfolio of investments in individual companies or businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:

#### **§7705. Eligibility for Participation in This Program**

A. The applicant organization must be a Louisiana-based venture capital fund organized for the purpose of making seed capital investments in Louisiana businesses.

B. The applicant organization may be organized either for profit or non-profit purposes.

C. The applicant organization must demonstrate that its management personnel have at least three years of experience in managing investments in individual, privately-held companies, utilizing funds provided by others to make such investments.

D. The applicant organization must have a minimum cash investment already on hand sufficient to cover the general and administrative costs for the first and early years of its operations.

E. The applicant organization must have already raised a minimum of \$250,000 to be eligible for co-investments or raised a minimum of \$500,000 to be eligible for a match investment; and must have already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in this Program. The minimum funds may be in cash and commitments.

F. The applicant organization must verify the eligibility of portfolio companies, obtain assurances of eligibility from each business, and assurances from each business that proceeds will be used for acceptable business purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR

#### **§7707. Application Requirements for Qualification or Eligibility, and for Co-Investment**

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a co-investment, a prospective seed capital fund must first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering two main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the Seed Capital Fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board screening committee or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full Board of Directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit résumés, references, and private placement memoranda for all principal members of the management team that are identified;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit résumés and/or descriptions of firms;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

6. provide evidence of the initial \$250,000 minimum capital required for the applicant fund's eligibility to participate in this program.

D. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. Targeted Market

a. Describe and discuss the types of businesses that the Seed Capital Fund will finance. Discuss the extent to

which the Seed Capital Fund intends to specialize in certain industries, or whether a more broad based approach is planned.

b. Describe the size range of businesses that it is contemplated the Seed Capital Fund will finance, with a general indication of where most of the focus is expected.

c. Discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated.

d. Discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices.

e. Provide any market analysis that the applicant deems relevant.

2. Financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments.

3. Marketing Strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance.

4. Screening Process and Evaluation Criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment.

5. Fee Income. Discuss the potential for fee income, and any plans that the Seed Capital Fund might have for generating fee income.

6. Management Assistance. Discuss the plans of the Seed Capital Fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in.

7. Complementary Relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalists and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed.

8. Management Structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team.

9. Idle Funds. Describe plans for the management of the idle funds of the seed capital fund.

10. Tax and Accounting Issues. Discuss relevant tax and accounting issues for the seed capital fund.

## 11. Financial Projections

a. Provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis.

b. Provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item.

c. Specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions.

d. Specify computer programs used for projections, and specify formulas used.

E. If the applicant fund has been found to be qualified or eligible to participate in this program by the LEDC board of directors, the application for the qualified applicant's co-investment project shall contain, but shall not be limited to, the identical information provided to the eligible seed capital fund requesting the co-investment. The LEDC or its staff may request additional information beyond that which has been provided. After its receipt and review by the LEDC staff, the completed application for the qualified applicant's co-investment project shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:

### **§7709. Application Requirements for Qualification or Eligibility, and for Match Investment**

A. Prior to a Seed Capital Fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a match investment, a prospective seed capital fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the Fund's existing or proposed management team;

2. if applicable, the fund's fund raising abilities, activities and success; and

3. the business plan for the seed capital fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request

additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for a match investment will then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit resumes, references, and private placement memoranda for all principal members of the management team that are identified.

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities.

3. describe the responsibilities of any principal management position for which a person has not been identified.

4. specify any directors that have been identified, and submit their resumes.

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms.

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

D. Fund Raising. In or with its application, the applicant shall:

1. specify the amount of LEDC commitment sought;

2. provide evidence of the amount of private capital that has been raised, and specify the ratio of actual cash to commitments raised;

3. describe the basic legal structure of the seed capital fund;

4. if applicable, describe and discuss the applicant's fund raising strategy for the raising of any additional private capital;

5. if applicable, specify the principal investor sources that the applicant fund will be targeting;

6. if applicable, provide the applicant's basic proposal to its prospective private investors, and the expectations and objectives the applicant is specifying. This shall include, for example, representations regarding reasonably expected returns on private equity investment, indirect financial benefits, if any, and social purposes, if applicable;

7. list all specific investors and financing commitments already obtained, including documentation for each. This shall include evidence of the initial \$500,000 minimum capital required for the applicant fund's eligibility to participate in this program;

8. specify whether applicant anticipates taking in all of the LEDC equity investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of equity capital raised.

E. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. Targeted Market

a. Describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned.

b. Describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected.

c. Discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated.

d. Discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices.

e. Provide any market analysis that the applicant deems relevant.

2. Financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments.

3. Marketing Strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance.

4. Screening Process and Evaluation Criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment.

5. Fee Income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income.

6. Management Assistance. Discuss the plans of the Seed Capital Fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in.

7. Complementary Relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed.

8. Management Structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team.

9. Idle Funds. Describe plans for the management of the idle funds of the seed capital fund.

10. Tax and Accounting Issues. Discuss relevant tax and accounting issues for the seed capital fund.

11. Financial Projections

a. Provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis.

b. Provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item.

c. Specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions.

d. Specify computer programs used for projections, and specify formulas used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2253 (October 2000), amended LR 38:

**§7711. Application Process**

A. All applications under this program must be submitted to the Executive Director, Louisiana Economic Development Corporation, P.O. Box 44153, Baton Rouge, 70804.

1. Application Requirements for Qualification or Eligibility to Participate in this Program and Co-Investment Application or Match Investment Application

a. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the co-investment project may be, but are not required to be, submitted simultaneously for consideration.

b. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the match investment project may be, but are not required to be, submitted simultaneously for consideration.

c. Once a seed capital fund is deemed qualified or eligible to participate in this program, the fund is not required to resubmit a qualification or an eligibility application for subsequent co-investment or match investment requests.

2. All applications received by LEDC will be reviewed by the LEDC staff, and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:

**§7713. Investments**

A. Co-Investment

1. A qualified or eligible fund that has not received a match investment from the LEDC may apply for co-Investment funds on a case by case basis. The co-investment of LEDC shall not exceed the lesser of 50 percent of the total round of investment needed or \$250,000.

2. Only investments in Louisiana businesses are eligible for co-investments.

3. Co-investments will be on the same terms and conditions as the seed capital fund has negotiated with the business included in the co-investment project.

B. Match Investment.

1. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$2.00 of funds privately raised by the applicant fund. The maximum LEDC match investment in an eligible fund shall not exceed \$1,000,000.

2. A qualified or eligible fund shall be a Louisiana organized and based seed capital fund. For purposes of this program, *organized and based* means the seed capital applicant fund is registered with the Louisiana Secretary of State's office, and that it maintains a staffed office in Louisiana where investments may be initiated and closed.

3. Match investment funds may be used only for Louisiana businesses.

4. The method of LEDC's investment into the qualified or eligible fund will be equal to the method of investment of the other investors into that fund, i.e., committed capital for committed capital, cash investment for cash investment, or cash and commitment for cash and commitment.

5. The terms of each match investment will be negotiated by LEDC on a case by case basis.

C. Closing

1. Prior to the disbursement of funds, the secretary-treasurer of LEDC and any one of the following: either the chairman of the board, the president, or the executive director of LEDC, shall execute all necessary legal instruments after certification by legal counsel that all appropriate legal requirements have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:

**§7715. Reporting**

A. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. A list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. A statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. A current reconciliation of the fund's net worth; and
4. An annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:

**Chapter 87. Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program**

**§8701. Purpose**

A. The purpose for this Chapter 87 Program shall be the same as the purposes previously provided in §7701 of Chapter 77 of Subpart 11 of the Louisiana Seed Capital Program which shall also apply to this Chapter 87 program; and additionally this Chapter 87 program is to establish the Louisiana Seed Capital Program for the federal program entitled the "State Small Business Credit Initiative (SSBCI) Program" and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to make seed stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment and seed investment opportunities located in the underserved markets that will be targeted with SSBCI funds. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups. This program is not intended for retail or professional services.

B. The LEDC wishes to maintain for this Chapter 87 program all of the purposes of §7701 and all of the other Sections and provisions of Chapter 77 of the seed capital program shown above, except where there is a need for the policies of this program to be different from Chapter 77. For this reason, all of the Sections and provisions of Chapter 77 above shall also apply to this Chapter 87, except in those instances where a different or additional rule or policy is provided below in this Chapter 87.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR

**§8703. Definitions**

A. All of the same definitions provided in §7703 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§8705. Eligibility for Participation in This Program**

A. Except as may be hereinafter provided, all of the eligibility provisions contained in §7705 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 Program, except that co-investments will not be utilized in this Chapter 87 program.

B. The applicant organization must have raised a minimum of \$500,000 in investments or has a minimum of \$2 1/2 Million under management, and already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Match Investment Program.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this Chapter 87 program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. such individual business investments shall not be extended to businesses with more than 750 employees;

3. any investment targeted in this Program shall not exceed the amount of \$ 5,000,000; and

4. any investment extended through this Program shall not exceed the amount of \$ 20,000,000.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§8707. Application Requirements for Qualification or Eligibility, and for Co-Investment**

A. None of the provisions contained in §7707 of Chapter 77 of the seed capital program shall apply to this Chapter 87 program. The co-investment provisions of Chapter 77 will not be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§8709. Application Requirements for Qualification or Eligibility, and for Match Investment**

A. Except as may be hereinafter provided, all of the provisions contained in §7709 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program. Only match investments will be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§8711. Application Process**

A. Except as may be hereinafter provided, all of the provisions contained in §7711 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 program. Co-investments will not be utilized in this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§8713. Investments**

A. Except as may be hereinafter provided, all of the provisions contained in §7713 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program, except that co-investments will not be utilized in this Chapter 87 program. Only match investments will be utilized in this SSBCI Chapter 87 Program.

B. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$1.50 of funds privately raised by the applicant fund. The maximum LEDC match investment in an eligible fund shall not exceed \$1,000,000.

C. LEDC investments made in a qualified seed capital fund will not exceed an initial investment of \$450,000, with two expected follow-up investments, but not to exceed a total investment of \$1,000,000 per fund.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§8715. Reporting**

A. Except as may be hereinafter provided, all of the provisions contained in §7715 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

Stephen M. Moret  
Secretary

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**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Louisiana Economic Development Corporation**

Small Business Loan and Guaranty (SBL and G) Program and State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.Chapters 1 and 3)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), are amending, supplementing and expanding portions of and readopting the rules of the Small Business Loan and Guaranty (SBL and G)

Program provided in LAC 19:VII.Chapter 1, and creating the new State Small Business Credit Initiative (SSBCI) Program in LAC 19:VII.Chapter 3, under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312. This Rule, adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective November 20, 2011, and shall remain in effect for the maximum period allowed under the Act, or until the adoption of a final Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, have found an immediate need to amend, supplement and expand certain provisions of and to readopt the rules regarding the Small Business Loan and Guaranty (SBL and G) Program and to create the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to these rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana; will help them grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities, especially for small business enterprises in all areas of our state, including distressed and rural areas. These programs will further help secure the creation or retention of jobs created by small businesses in Louisiana that require state assistance in order to start, maintain or expand their operations, and/or increase their capital investment in Louisiana. Without this Emergency Rule the public welfare may be harmed as the result of the loss of small business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

**Title 19**

**CORPORATIONS AND BUSINESS**

**Part VII. Louisiana Economic Development Corporation**

**Subpart 1. Small Business Loan and Guaranty Program Chapter 1. Loan and Guaranty Policies for the Small Business Loan and Guaranty Program (SBL and GP)**

**§101. Purpose**

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, medium to long-term loans, lines of credit loans, loan guaranties, loan participations and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of helping them grow and expand their businesses and of providing higher levels of employment, income growth, and expanded economic opportunities, especially to small and emerging businesses and disabled person business enterprises and within distressed and rural areas of our State.

B. The corporation will consider sound business loans, lines of credit, loan guaranties and loan participations so long as resources permit. The board of directors of the corporation recognizes that lending money, granting lines of credit, guaranteeing loans or participating in loans carries certain risks and is willing to undertake reasonable exposure.

C. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:445 (June 1989), re-promulgated LR 23:40 (January 1997), LR 26:2255 (October 2000), amended LR 38:

### §103. Definitions

*Board*—Board of Directors of Louisiana Economic Development Corporation.

*Borrower*—also referred to herein as the *applicant/borrower* or *customer/borrower*; the business person or entity borrowing and accepting the loaned funds from the Lender.

*Corporation*—Louisiana Economic Development Corporation.

*Disabled Person's Business Enterprise*—a small business concern which is at least 51 percent owned and controlled by a disabled person, as defined by the federal Americans with Disabilities Act of 1990.

*Financial Institution*—also referred to herein as a *Bank*, *Financial Lending Institution*, *Lending Institution*, *Commercial Lending Entity*, or *Lender*; includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in §103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

*Lead Lender*—the bank or other lender that makes or originates the loan with the borrower.

*LED*—Louisiana Department of Economic Development.

*LEDC*—Louisiana Economic Development Corporation.

*Lender*—also referred to herein as the *applicant/lender*; the Financial Institution originating the loan and providing the loan funds to the Borrower.

*Line of Credit*—the maximum amount of loan credit that a borrower is allowed to borrow over a period of time, whereby funds may be borrowed, provided or extended in various amounts over the agreed term, repaid or partially repaid by the borrower, and which funds may be re-extended by the lender to the borrower and repaid by the borrower over the agreed term of the credit.

*Loan*—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit loan, loan guaranty and loan participation.

*Loan Guaranty* or *Guarantee*—an agreement to pay the loan of another borrower, up to any limit in the amount guaranteed as provided in the agreement, in case the original borrower defaults in or is unable to comply with his repayment obligation.

*Loan Participation*—an agreement to participate as a lender in a loan or to acquire from the lender a share or ownership interest in a loan. A *purchase participation* or

*purchase transaction* is one in which the State purchases a portion of a loan originated by a lender; and a *companion loan*, a *parallel loan*, or a *co-lending participation* is one in which the lender originates a loan and the State originates a second loan to the same borrower. (In the latter case, the State's second loan may be subordinate or co-equal to the first loan originated by the lender.) *Loan Participations* enable the state to act as a lender, in partnership with a financial institution lender, to provide small business loans at attractive terms.

*Permanent Full-Time Jobs*—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

*Small and Emerging Business*—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Community Outreach Services.

*Small Business Concern*—as defined by SBA for purposes of size eligibility as set forth by 13 C.F.R. 121.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR23:40 (January 1997), amended LR 26:2255 (October 2000), amended LR 38:

### §105. Application Process

A. Any applicant/borrower(s) applying for either a loan, line of credit, loan guaranty or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. Information submitted to LEDC with the application representing the applicant's/borrower's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. The following submission and review policies shall be followed.

1. A completed Louisiana Economic Development Corporation application form must be submitted to LEDC.

2. Small and emerging businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's community outreach services, along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's business enterprise provision shall submit adequate information to support the disabled status.

4. The applicant/lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own analysis and evaluation of the application, independent of the lending institution's analysis and evaluation.



5. The applicant/lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. LEDC staff will review the application and analysis, and then make recommendations. The staff will work with the applicant/lender on terms of the loan, including interest rate, maturity, collateral, other loan terms, and any LEDC loan stipulations or requirements.

7. The LEDC's board screening committee or the board's other designated committee will review only the completed applications submitted by LEDC staff and may approve or disapprove applications within its authority as established by the LEDC board, or will make recommendations to the LEDC board.

8. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution are not required to attend the board screening committee or other designated committee meeting unless requested by LEDC or its staff to do so.

9. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution shall be required to attend the LEDC's Board of Directors meeting wherein the application will be considered by the board.

10. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the application within its authority has the final approval authority for such applications.

11. The applicant/borrower or the lending institution will be notified within five working days by mail or e-mail of the outcome of the application process.

12. An LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within five working days of approval by the LEDC board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997), LR 26:2255 (October 2000), amended LR 38:

#### **§107. Eligibility/Ineligibility for Participation in This Program**

A. In connection with the business purpose for the requested loan, applicant/borrower(s) shall create in this state at least two new permanent full-time jobs.

B. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident(s) of Louisiana;

2. certified small and emerging businesses (SEBs);

3. disabled person's business enterprises domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident(s) of Louisiana; or

4. Funding requests for any business purpose may be considered, except for the following ineligible businesses or purposes:

a. restaurants (except for regional or national franchises), including grills, cafes, fast food operations,

motorized vehicle, trailer, curb-side or sidewalk food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises;

b. bars, packaged liquor stores, including any other business or project established for the principal purpose of dispensing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing as its business;

e. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

f. funding for the principal purpose of refinancing existing debt;

g. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

h. funding for the purpose of establishing a park, theme park, amusement park, or camping facility; or

i. funding for the purpose of buying out any family member or reimbursing any family member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:41 (January 1997), LR 26:2255 (October 2000), amended LR 38:

#### **§109. General Loan, Credit, Guaranty and Participation Provisions**

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans or approving lines of credit, loan guaranties or loan participations:

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan, line of credit, loan guarantee or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan, line of credit, loan guarantee or participation if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

3. The terms or conditions imposed and made part of any loan, line of credit, loan guaranty or loan participation authorized by vote of the corporation board, its board

screening committee or its other designated committee shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board, its board screening committee or other designated committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this Program. Such lenders shall bear at least 25 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

**B. Interest Rates**

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York prime as published in the Wall Street Journal at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding between 1 and 5 percentage points.

3. The applicant/lender may apply for a linked deposit under the Small Business Linked Deposit Program on the term portion of either a guaranteed loan or a participated loan.

**C. Collateral**

1. The collateral-to-loan ratio will be no less than one-to-one (1:1).

2. The collateral position may be negotiated, but it shall be no less than a sole second position.

**3. Collateral Value Determination**

a. The appraiser must be certified by recognized organization in the area of the collateral.

b. The appraisal cannot be more than 90 days old.

4. Acceptable collateral may include, but shall not be limited to, the following:

a. fixed assets—business real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guarantees may be used only as additional collateral and will not count toward the 1:1 coverage; if used, signed and dated personal financial statements of the guarantors must also be submitted to LEDC;

d. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value (to be used with personal guarantee only).

5. Unacceptable collateral may include, but shall not be limited to the following:

a. stock in applicant/borrower company and/or related companies;

b. personal items or personal real estate;

c. intangibles.

**D. Equity Requirements**

1. Equity required will be 20 percent of the loan or line of credit amount for a start-up operation or acquisition, and no less than 15 percent for an expansion. However, if 20

percent is not available for a guarantee the following chart may be applied which provides for a guarantee fee attached to a lesser equity position.

Equity %	Guarantee Fee
19 %	2.20 %
18 %	2.40 %
17 %	2.60 %
16 %	2.80 %
15 %	3.00 %
14 %	3.20 %
13 %	3.40 %
12 %	3.60 %
11 %	3.80 %
10 %	4.00 %

\*In no case shall the equity position be less than ten (10%) percent.

**2. Equity is defined to be:**

- a. cash;
- b. paid-in capital;
- c. paid-in surplus and retained earnings; or
- d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

**E. Limit on the Amount of LEDC's Guarantee**

1. For small business loans, the corporation's loan guarantee shall be:

a. no greater than 75 percent of a loan of up to \$650,000;

b. no greater than 70 percent of a loan of up to \$1,100,000;

c. no greater than 65 percent of a loan of up to \$2,300,000; or

d. if the loan request exceeds \$2,300,000, the guaranty shall not exceed \$1,500,000.

2. For certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be:

a. no greater than 90 percent of a loan of up to \$560,000;

b. no greater than 85 percent of a loan of up to \$875,000;

c. no greater than 75 percent of a loan of up to \$2,000,000; or

d. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

3. For small businesses, the corporation's loan participation shall be no greater than 40 percent, but in no case shall it exceed \$1,500,000.

4. For certified small and emerging businesses, or disabled person's business enterprises, the corporation's loan participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

**F. Terms**

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, but line of credit loans shall not exceed five years and term loans shall not exceed seven years. The LEDC shall have an opportunity to approve the terms of such loans prior to the closing.

**G. LEDC Fees**

1. LEDC will charge a guaranty fee not to exceed a maximum amount of 4 percent on the guaranteed loan

amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. LEDC will charge a \$100 application fee, unless the board, the board screening committee or other designated committee waives the application fee.

3. LEDC will share in a pro-rata position in any fees assessed by the lender on a loan participation.

H. Use of Loan Funds (including Line of Credit, Guaranty and Participation Funds)

1. Loan funds may be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be occupied by the applicant/borrower to the extent of at least 51 percent.

2. Loan funds may be used for the purchase of equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC, but will not be considered when the debt:

a. exceeds 25 percent of the total loan, with the following exception:

i. a maximum of 35 percent may be considered on a guaranteed loan, but the guaranteed percentage will be decreased by 5 percent;

b. pays off a creditor or creditors who are inadequately secured;

c. provides funds to pay off a debt to principals of the borrower business; and/or

d. provides funds to pay off family members.

5. Loan funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Loan funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended LR 38:

### **§111. General Agreement Provisions**

#### **A. Guaranty Agreement**

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan or line of credit, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The loan or line of credit shall not be sold, assigned, participated out, or otherwise transferred without the prior written consent of the LEDC board.

3. If liquidation through foreclosure occurs, the lender will sell the collateral and handle the legal proceedings.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan or line of credit;

b. if no principal reduction has occurred in any annual period of the loan or line of credit, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the lender and the corporation, as stated in the guarantee agreement.

#### **B. Participation Agreement**

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lead lender will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead lender may sell other participations with LEDC's consent.

4. Should liquidation through foreclosure occur, the lender will sell the collateral and handle the legal proceedings.

5. The lender is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the participation agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the lender and the corporation, as stated in the participation agreement.

#### **C. Borrower Agreement**

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997), LR 26:2257 (October 2000), amended LR 38:

### **§113. Confidentiality**

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower. (See Louisiana Attorney General's Opinion #82-860.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2257 (October 2000), amended LR 38:

### **§115. Conflict of Interest**

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or

members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2258 (October 2000), amended LR 38:

### **Chapter 3. Loan and Guaranty Policies for the State Small Business Credit Initiative (SSBCI) Program**

#### **§301. Purpose**

A. The purposes for this Chapter 3 Program shall be the same as the purposes previously provided in Section 101 of Chapter 1 of the Small Business Loan and Guaranty Program which shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program); and additionally this Chapter 3 program is to establish Loan and Guaranty Policies for the federal program entitled the State Small Business Credit Initiative (SSBCI) Program and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to include a broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform lenders, small businesses and trade associations of the program, and to generate increased small business activity, awareness and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The LEDC will also monitor these plans, including the repayment progress of borrowers, the servicing performance of participating lenders, and to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

B. The LEDC wishes to maintain for this Chapter 3 Program all of the purposes of §101 and all of the other Sections and provisions of Chapter 1 of the Small Business Loan and Guaranty Program shown above, except where there is a need for the policies of this Program to be different from Chapter 1. For this reason, all of the Sections and provisions of Chapter 1 above shall also apply to this Chapter 3, except in those instances where a different or additional rule or policy is provided below in this Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

#### **§303. Definitions**

A. All of the same definitions provided in Section 103 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

#### **§305. Application Process**

A. Except as may be hereinafter provided, all of the provisions contained in §105 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above Subsection A, in connection with each loan to be enrolled under this Chapter 3 program the financial institution lender shall also be responsible for obtaining and providing to LEDC with the lender's application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI Program. And additionally, each financial institution lender must also obtain and provide to LEDC with its application under this Chapter 3 Program an assurance from the borrower affirming:

1. The loan proceeds must be used for a business purpose. A *business purpose* includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

i. For the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to

the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

4. The borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

C. The financial institution lender must also provide to LEDC with its application, in connection with each loan to be enrolled under this Chapter 3 Program, an assurance affirming:

1. the loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender;

3. no principal of the financial institution lender has been convicted of a sex offense against a minor [as such

terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

### **§307. Eligibility/Ineligibility for Participation in This Program**

A. Except as may be hereinafter provided, all of the provisions contained in §107 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 Program (except that loan participations will not be utilized in this Chapter 3 Program).

B. In addition to the eligibility and ineligibility provisions provided in the Section mentioned in the above Subsection A, applicant/borrowers and loans, lines of credit and loan guarantees in connection with this Chapter 3 Program shall meet the following criteria:

1. the applicant/borrower(s) shall employ 500 employees or less at the time the loan is enrolled in this program;

2. this credit support shall not be extended to applicant/borrower(s) that have more than 750 employees;

3. any loan supported in this program shall not exceed a principal amount of \$5,000,000;

4. any credit extended through this program shall not exceed a principal amount of \$20,000,000;

5. SSBCI funds utilized in this Chapter 3 program will be permitted only for new extensions of credit; that is, funds of the SSBCI Program shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit or other borrowing, that were previously made available as part of a state small business credit enhancement program; and

6. Small Business Administration (SBA) guaranteed loans shall not be purchased in loan participations through this program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

### **§309. General Loan, Credit, Guaranty and Participation Provisions**

A. Except as may be hereinafter provided, all of the provisions contained in §109 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Interest Rates

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York

prime as published in the *Wall Street Journal* at either a fixed or variable rate.

C. Equity Requirements

1. To qualify for this Chapter 3 program, the borrower must infuse not less than 15 percent into the equity in an existing or expanding business, or not less than 20 percent into the equity of a start-up operation or an acquisition.

D. Limit on the Amount of LEDC's Guarantee

1. In connection with loans included in this Chapter 3 program, for certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be:

- a. no greater than 75 percent of a loan of up to \$2,000,000; or
- b. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

E. Terms

1. For loans included in this Chapter 3 program, the term of line of credit loans and term loans shall not exceed three years.

F. LEDC Fees

1. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge a guaranty fee not to exceed a maximum amount of 2 percent of the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge no application fee.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§311. General Agreement Provisions**

A. Except as may be hereinafter provided, all of the provisions contained in §111 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§313. Confidentiality**

A. All of the provisions contained in §113 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

**§315. Conflict of Interest**

A. All of the provisions contained in §115 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:

Stephen M. Moret  
Secretary

1111#034

**DECLARATION OF EMERGENCY**

**Office of the Governor  
Division of Administration  
Office of State Uniform Payroll**

Temporary Approval Period and Transition  
to the New January-December Plan Year  
for Approved Statewide Vendors

The Division of Administration through the Office of State Uniform Payroll (OSUP) is exercising the emergency provisions of the Administrative Procedures Act (APA), R.S. 49:953(B), and pursuant to the authority granted under R.S. 42:455(A), adopts the following emergency rule effective November 20, 2011. Unless extended, this rule shall remain in effect for the maximum period allowed under the APA, or until it expires under its own terms and conditions, whichever period is shorter.

The application and approval process of Statewide Vendors and products sold to state employees through payroll deductions, many of which qualify as "flexible benefits" under IRS rules, is coordinated with the Office of Group Benefits (OGB) Flexible Benefits Plan year. The new OGB Flexible Benefits Plan year, which will be changed effective January 1, 2012 from July 1 to June 30, to January 1 to December 31, will effectively disrupt OSUP's application submission and approval deadlines, and the approved time periods of Statewide Vendors.

Approximately 46,000 employees paid through the LaGov HCM system qualify to take advantage of flexible and supplemental insurance products provided through payroll deductions including coverage for accident, cancer, dental, disability, heart, hospital indemnity, identity theft, intensive care, legal, long term care, term life, universal life, vision, and whole life. Disruptions in the ability of employees to enroll for such benefits will occur if vendor approval lapses for six months. Moreover, state and private resources will be wasted if OSUP and Statewide Vendors are required to go through the application process twice in a 12-month timeframe. The rights and interests of state employees, OSUP, and Statewide Vendors will be adversely affected unless the approved period to provide products is extended from 12 to 18 months, and the new application deadline extended until July 1, 2012.

**Title 4**

**ADMINISTRATION**

**Part III. Payroll**

**Chapter 1. Payroll Deductions**

**§107. Temporary Approval Period and Transition to the New January-December Plan Year for Approved Statewide Vendors**

A. The Office of Group Benefits has modified their Flexible Benefits Plan year to be a calendar year basis

(January 1-December 31) instead of a fiscal year basis (July 1-June 30), effective January 1, 2012. Some of the products offered by Statewide Vendors are included in the OGB Flexible Benefits Plan, so changes are needed to coincide with the new plan year.

1. Applications submitted by January 31, 2011, as set forth in §106.D. and approved by the Employee Payroll Benefits Committee and the Commissioner of Administration, as set forth by §106.G. and §106.I. will be granted an extended approval time frame for continued and new payroll deductions through December 31, 2012.

2. Section 106.B. regarding requests for new products is hereby suspended for calendar year 2011 only. Requests for new statewide vendor products received by the current December 1, 2011 deadline will be considered in accordance with the proposed timeline set forth in §106.B. in the Notice of Intent published in October 20, 2011 Louisiana Register.

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 State Uniform Payroll, LR 37:

Steven Procopio, Ph.D.  
Assistant Commissioner

1111#024

## DECLARATION OF EMERGENCY

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

Adult Day Health Care  
Minimum Licensing Standards  
(LAC 48:I.4203, 4207, 4227, 4245, and 4267)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.4203, §4207, §4227, §4245, and §4267 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.41-2120.46, 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 standards for payment for adult day health care (ADHC) services to remove those provisions governing licensing from LAC 50:XXI and repromulgated the licensing standards in LAC 48:I (*Louisiana Register*, Volume 34, Number 10). The October 20, 2008 final Rules were repromulgated due to an error upon submission to the Office of State Register (*Louisiana Register*, Volume 34, Number 12).

The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the minimum licensing standards for ADHC centers to revise and clarify the staffing and transportation requirements. This action is being taken to promote the health and welfare of Louisiana citizens by assuring continued access to ADHC services through the

development of a more efficient licensing infrastructure in order to stimulate growth in the ADHC provider community.

Effective November 29, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the minimum licensing standards for adult day health care centers.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

### Chapter 42. Adult Day Health Care

#### Subchapter A. General Provisions

#### §4203. Definitions

\* \* \*

*Direct Service Worker*—an unlicensed staff person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the participant.

*Director*—the person designated by the governing body of the ADHC to:

1. manage the center;
2. insure that all services provided are consistent with accepted standards of practice; and
3. ensure that center policies are executed.

\* \* \*

*Full Time Equivalent*—40 hours of employment per week or the number of hours the center is open per week, whichever is less.

\* \* \*

*Key Staff*—the designated program manager(s), social worker(s) or social services designee(s), and nurse(s) employed by the ADHC. A key staff person may also serve as the ADHC Director.

\* \* \*

*Program Manager*—a designated staff person, who is responsible for carrying out the center's individualized program for each participant.

\* \* \*

*Social Service Designee/Social Worker*—an individual responsible for arranging medical and/or social services needed by the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008), repromulgated LR 34:2622 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### §4207. Initial License Application Process

A. - A.6. ...

a. line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000; and

b. general and professional liability insurance of at least \$300,000.

c. Repealed.

A.7. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR

34:2624 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Subchapter B. Administration and Organization**

### **§4227. Policy and Procedures**

A. - B.9. ...

C. The director, or his designee:

1. is responsible for the execution of ADHC center policies; and

2. shall be accessible to center staff or to any representative of the Department of Health and Hospitals conducting an audit, survey, monitoring activity, or research and quality assurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008), repromulgated LR 34:2628 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Subchapter D. ADHC Center Services**

### **§4245. Transportation Requirements**

A. - G. ...

H. Centers are expected to provide transportation to any client within their licensed region, but no client, regardless of their region of origin, may be in transport for more than one hour on any single trip.

1. If the center develops a policy that establishes a limited mileage radius for transporting participants, that policy must be submitted to DHH for review and approval prior to the center being allowed to limit transportation for participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008), repromulgated LR 34:2631 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

## **Subchapter G. Center Responsibilities**

### **§4267. Staffing Requirements**

A. Staff at ADHC centers shall meet the following education and experience requirements. All college degrees must be from a nationally accredited institution of higher education as defined in §102(b) of the Higher Education Act of 1965 as amended. The following "key" staff positions are required and subject to the provisions listed below.

1. Social Service Designee/Social Worker. The center shall designate at least one staff person who shall be employed at least 10 hours a week to serve as the social services designee or social worker.

a. The social services designee shall have, at a minimum, a bachelor's degree in a human service-related field such as psychology, sociology, education, or counseling. Two years of experience in a human service-related field may be substituted for each year of college.

b. The social worker shall have a bachelor's or master's degree in social work.

2. Nurse. The center shall employ one or more LPNs or RNs who shall be available to provide medical care and supervision services as required by all participants. The RN or LPN shall be on the premises daily for at least 8 hours, the number of hours the center is open, or during the time participants are present at the center, whichever is least. Nurses shall have a current Louisiana state license.

a. - b. Repealed.

3. Program Manager. The center shall designate at least one staff member who shall be employed at least 10 hours a week to be responsible for carrying out the center's individualized program for each participant. The program manager should have program planning skills, good organization abilities, counseling and activity programming experience.

3.a. - 7.e. Repealed.

B. The following additional staff positions are required, subject to the provisions listed below:

1. Food Service Supervisor. The center shall designate one staff member who shall be employed at least 10 hours a week who shall be responsible for meal preparation and/or serving. The Food Service Supervisor must have ServSafe® certification.

2. Direct Service Worker. An unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well being, and who is involved in face-to-face direct contact with the participant.

3. Volunteers. Volunteers and student interns are considered a supplement to the required staffing component. A center which uses volunteers or student interns on a regular basis shall have a written plan for using these resources. This plan must be given to all volunteers and interns and it shall indicate that all volunteers and interns shall be:

a. directly supervised by a paid staff member;

b. oriented and trained in the philosophy of the center and the needs of participants as well as the methods of meeting those needs;

c. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;

d. aware of and briefed on any special needs or problems of participants; and

e. provided program orientation and ongoing in-service training. The in-service training should be held at least quarterly.

C. The direct service worker to participant ratio shall be a minimum of one full-time direct service worker to every nine participants.

D. Center staffing requirements shall be based on licensed capacity; however, the center shall ensure that the following requirements are met regardless of the licensed capacity of the center.

1. The RN or LPN shall be on the premises daily for at least 8 hours, the number of hours the center is open, or during the time participants are present at the center, whichever is less.

2. If the RN or LPN has been on duty at least 8 hours and there are still participants present in the ADHC, the RN or LPN may be relieved of duty, however, at least one key staff person shall remain on duty at the center. The key staff person shall be the social service designee/social worker or the program manager.

3. A staff member who is certified in CPR must be on the premises at all times while clients are present.

E. Centers with a licensed capacity of 15 or fewer clients may designate one full-time staff person or full-time



equivalent person to fill up to three “key staff” positions, and must employ at least one full-time person or full-time equivalent to fulfill key staff requirements.

F. Centers with a licensed capacity to serve 16-30 clients must employ at least two full-time persons or full-time equivalents to fulfill key staff requirements, and may designate one full-time staff person or full-time equivalent person to fill up to, but no more than, two “key staff” positions.

G. Centers with a licensed capacity to serve more than 30 clients must employ at least three full-time persons or full time equivalents to fill key staff positions. Each key staff position must be filled with a full-time person or full-time equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008), repromulgated LR 34:2634 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#051

## **DECLARATION OF EMERGENCY**

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

CommunityCARE Program  
Program Redesign

(LAC 50:I.2901-2907, 2911-2913, 2917 and 2919)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.2901-2907, 2911-2913 and adopts 2917 and 2919 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 provisions governing primary care provider referrals and authorization in order to exempt urgent care facilities and retail convenience clinics from that requirement (*Louisiana Register*, Volume 36, Number 7). The final Rule was published January 20, 2011 (*Louisiana Register*, Volume 37, Number 1). The department promulgated an Emergency Rule in order to redesign the CommunityCARE Program by amending the provisions governing recipient participation, provider selection,

provider qualifications, referrals and authorizations and primary care provider reimbursement (*Louisiana Register*, Volume 37, Number 1). In addition, the department implemented a pay-for-performance incentive payment methodology and a quality committee. The department promulgated an Emergency Rule which amended the provisions of the January 1, 2011 Emergency Rule in order to clarify these provisions, and revised the formatting of LAC 50:I.2911 as a result of the promulgation of the January 20, 2011 final Rule governing the CommunityCARE Program (*Louisiana Register*, Volume 37, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2011 Emergency Rule in order to avoid a budget deficit in the medical assistance programs and to improve recipient access to quality care by requiring greater provider accountability.

Effective December 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the CommunityCARE Program.

## **Title 50**

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

#### **Part I. Administration**

#### **Subpart 3. Medicaid Coordinated Care**

#### **Chapter 29. CommunityCARE 2.0**

#### **§2901. Introduction**

A. - B. ...

C. Effective January 1, 2011, the CommunityCARE Program shall hereafter be referred to as CommunityCARE 2.0 to illustrate the program redesign being implemented 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 of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **§2903. Recipient Participation**

A. The following groups of Medicaid recipients are mandatory enrollees in the CommunityCARE 2.0 Program:

1. TANF and TANF-related recipients;
2. SSI and SSI-related, non-Medicare, recipients who are age 19 up to age 65; and
3. CHIP recipients.

B. Effective January 1, 2011, or as soon as federal statutes allow enrollment, the following groups of Medicaid recipients may voluntarily enroll to participate in the CommunityCARE 2.0 Program:

1. recipients who are under age 19 and are in foster care, other out-of-home placement or receiving adoption assistance;
2. recipients who are under age 19 and are eligible for SSI under Title XVI or an SSI-related group;
3. recipients who are under age 19 and are eligible through a Home and Community-Based Services Waiver; and
4. recipients receiving services through a family-centered, community-based, coordinated care system that receives grant funds under Section 501(a)(1)(D) of Title V, and is defined by the state in terms of either program participation or special health care needs.

5. - 14.c. Repealed.

C. The following groups of recipients are excluded from participation in the CommunityCARE 2.0 Program. Individuals who:

1. are residents of:
  - a. nursing facilities;
  - b. intermediate care facilities for persons with developmental disabilities; and
  - c. psychiatric facilities;
2. are age 65 or older;
3. are dual eligibles (Medicare Part A or Part B coverage or both);
4. are refugees;
5. have other primary health insurance that covers physician benefits, including health management organizations (HMOs);
6. are receiving Hospice;
7. have eligibility less than three months or retroactive only eligibility;
8. are eligible through pregnant woman eligibility categories;
9. are eligible through CHIP Phase IV unborn option;
10. are participants in the All Inclusive Care for the Elderly (PACE) Program;
11. are under age 19 and eligible through the CHIP Affordable Plan;
12. are eligible through the TAKE CHARGE Family Planning Waiver;
13. are in the Medicaid physician/pharmacy lock-in program (pharmacy only lock-in recipients are not exempt from participation); or
14. are Native Americans who are members of federally recognized tribes.

D. Requests for medical exemptions shall be reviewed for approval on a case-by-case basis for certain medically high risk recipients that may warrant the direct care and supervision of a non-primary care specialist.

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 29:908 (June 2003), amended LR 32:404 (March 2006), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **§2905. Provider Selection**

A. Recipients have the opportunity to select a participating physician, physician group, nurse practitioner, federally qualified health center (FQHC), or rural health clinic (RHC) located in their parish of residence or in a contiguous parish to be their primary care provider.

1. Exceptions to the PCP location requirement may be considered on a case-by-case basis based on medical need (e.g. special needs populations).

2. Recipients who do not select a PCP are automatically assigned to a participating provider.

3. The PCP shall provide basic primary care, referral and after-hours coverage services for each linked recipient. The fact that each recipient has a PCP allows continuity of care focused on the PCP as a care manager.

B. Mandatory CommunityCARE 2.0 enrollees that fail to select a PCP and voluntary enrollees that do not exercise their option not to participate in the CommunityCARE 2.0 Program within the timeframes specified by the department,

shall be automatically assigned to a PCP in accordance with the department's algorithm/formula.

1. - 4.c. Repealed.

C. CommunityCARE 2.0 recipients may request to change primary care providers for cause at any time. Circumstances that are considered cause for changing PCPs at any time include, but are not limited to the following:

1. the recipient moves out of the PCP's service area;
2. because of moral or religious objections, the PCP does not cover the service that the recipient seeks; or
3. lack of access to services or providers with experience in dealing with the recipient's health care needs.

D. Recipients may change primary care providers without cause at any time during the first 90 days of enrollment with a primary care provider and at least every 12 months thereafter.

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, LR 17:788 (August 1991), amended LR 19:645 (May 1993), LR 27:547 (April 2001), repromulgated LR 29:909 (June 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **§2907. Provider Qualifications**

A. In order to participate in the program and qualify for the monthly PMPM base reimbursement, a primary care provider must:

1. meet all of the general Medicaid enrollment conditions;
2. be an enrolled Medicaid provider in good standing;
3. meet the CommunityCARE 2.0 participation standards; and
4. sign an attestation which documents agreement to comply with program requirements.

a. CommunityCARE PCPs must submit the required attestation within the timeframe specified by the department in order to transition to participation in the CommunityCARE 2.0 Program.

b. Transitioning PCPs that fail to submit the attestation will be terminated from the CommunityCARE 2.0 Program and enrollees shall be given the choice of other participating providers as soon as systematically possible.

5. - 7. Repealed.

B. In addition, the following requirements must be met for participation.

1. A full-time equivalent (FTE) PCP must provide direct medical care a minimum of 20 hours per week at a single location.

a. During the program transition to CommunityCARE 2.0 and to afford an opportunity and time for the PCP to meet the requirement for providing a minimum of 20 hours per week of direct medical care, the PCP must attest their intent to implement this requirement by January 31, 2011 and these hours must be in place by March 31, 2011 in order for the monthly payment to be made. The base management fee will only be paid after this period if these hours have been verified.

b. If the PCP does not provide the required 20 hours of direct medical care per week as of March 31, 2011, the PCP shall be deemed in non-compliance with the participation requirements and shall be disenrolled from CommunityCARE 2.0 and all linkages will be terminated.

2. PCPs with less than 100 linkages may participate in the program, but will receive base management fee only and are not eligible to participate in the pay-for performance (P4P) pool.

a. new PCPs who have not previously participated in CommunityCARE shall be exempt from this requirement for the first 12 months of their entry into the CommunityCARE 2.0 Program;

3. PCPs or practices with linkages of 5,000 or more must have extended office hours of at least six hours per week for scheduling routine, non-urgent and urgent appointments. Extended office hours shall include those services rendered between the hours of 5 p.m. and 8 a.m. Monday through Friday, on weekends and state legal holidays. The extended hours requirement may be met on weekdays, weekends or through a combination of both. Documentation relative to the services provided during extended hours must include the time that the services were rendered.

4. The PCP must provide an e-mail address and maintain Internet access in order to conduct administrative transactions electronically with the department.

5. The PCP must participate in the Louisiana Immunization Network for Kids Statewide (LINKS). During the program transition to CommunityCARE 2.0 and to afford an opportunity and time for the PCP to participate in the LINKS, the PCP must attest their intent to comply with this requirement by January 31, 2011. Installation and participation must be in place by March 31, 2011 in order for the monthly payment to be made.

a. LINKS participation is required for all CommunityCARE 2.0 PCPs regardless of provider specialty or age group of enrollees linked to the practice.

C. The following individual practitioners and clinics may participate as PCPs:

1. general practitioners;
2. family practitioners;
3. pediatricians;
4. gynecologists;
5. internists;
6. obstetricians;
7. federally qualified health centers;
8. rural health clinics; and
9. nurse practitioners.

D. Other physician specialists who meet the program standards for participation may be approved by the department to be PCPs under certain circumstances.

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 29:909 (June 2003), amended LR 32:32:405 (March 2006); amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **§2911. PCP Referral/Authorization**

A. - A.20. ...

21. dentures for adults;

22. services provided by urgent care facilities and retail convenience clinics;

a. These providers furnish walk-in, non-routine care as an alternative to emergency department care when access to primary care services is not readily available to meet the health needs of the recipient.

b. Urgent care facilities and retail convenience clinics must provide medical record notes of the visit to the recipient's PCP within 48 hours of the visit; and

23. effective for dates of service on or after January 1, 2011, services provided by federally qualified health centers (FQHCs).

a. These providers furnish walk-in, non-routine care as an alternative to emergency department care when access to primary care services is not readily available to meet the health needs of the recipient.

b. FQHCs must provide medical record notes of the visit to the recipient's PCP within 48 hours of the visit.

c. Failure to provide the medical records to the PCP within the specified timeframe will result in assessment of a penalty of \$200 per occurrence to the FQHC.

B. - B.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 of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:405 (March 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:338 (January 2011), amended LR 37:

#### **§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 covered in the Professional Services Program.

C. Effective January 1, 2011, the base care management fee paid to CommunityCARE 2.0 primary care providers shall be reduced to \$1.50 per member per month to the following recipient groups:

1. TANF and TANF-related recipients; and
2. SSI and SSI-related, non-Medicare, recipients who are age 19 up to age 65; and
3. CHIP recipients.

D. Effective January 1, 2011, or as soon as federal statutes allow enrollment, a base management fee of \$1.50 per month will be paid to CommunityCARE 2.0 primary care providers per linkage to Native American recipients who are members of a federally recognized tribe.

E. Effective January 1, 2011, or as soon as federal statutes allow enrollment, the base management fee of \$3 per month will be paid to CommunityCARE 2.0 primary care providers per linkage to the following recipients:

1. recipients who are in foster care, other out-of-home placement, or receiving adoption assistance;
2. SSI and SSI-related recipients under age 19; and
3. recipients who are receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of Title V, and is defined by the state in terms of either program participation or special health care needs.

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, 29:910 (June 2003), amended by the

**§2917. Pay-for-Performance Incentives**

A. Effective January 1, 2011, or as soon as federal statutes allow enrollment, a pay-for-performance payment shall be reimbursed to PCPs for linkages to recipients in the following eligibility groups as an incentive to enhance quality of care and promote provider accountability:

1. TANF and TANF related recipients;
2. SSI and SSI-related, non-Medicare, recipients who are age 19 up to age 65;
3. CHIP recipients;
4. recipients who are under the age of 19 and are:
  - a. in foster care, other out-of-home placement, or receiving adoption assistance; or
  - b. eligible through SSI or SSI-related eligibility categories;
5. recipients receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of Title V, and is defined by the state in terms of either program participation or special health care needs; and
6. recipients who are eligible through Home and Community-Based Services Waivers.

B. Pay-for-Performance Measures and Reimbursement

1. P4P payments will be based on a pre-determined PMPM in accordance with PCP compliance with the following performance measures and shall be reimbursed on a quarterly basis. The PCP must attest to meeting certain performance standards and the department will monitor the PCPs for program compliance.

a. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Screenings. A payment of \$0.25 PMPM for recipients under the age of 21 will be made if all screenings are performed in the PCP's office.

b. National Committee for Quality Assurance (NCQA) Patient-Centered Medical Home Level 1 Recognition or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) Primary Care Home Accreditation. A payment of \$0.50 PMPM will be made if the PCP provides verification of NCQA patient centered medical home Level 1 or higher status recognition, or JCAHO primary care home accreditation.

i. During the program transition to CommunityCARE 2.0 and to afford an opportunity and time for PCPs to attain NCQA recognition or JCAHO accreditation, this payment will be made for the first three quarters based on attestation and documentation that the PCP is pursuing NCQA recognition or JCAHO accreditation.

ii. Effective for the quarter beginning October 1, 2011, payment will be contingent on the PCP providing verification of NCQA recognition or JCAHO accreditation no later than the last month of the quarter.

c. Extended Office Hours. A quarterly payment of \$0.75 PMPM will be made if the PCP meets the extended office hours requirement and provides scheduling for routine, non-urgent and urgent appointments during these hours.

i. The extended office hours must be at a minimum:

- (a). six hours per week if the PCP has over 5,000 linkages;

(b). four hours per week if the PCP has from 2,000 to 5,000 linkages; and

(c). two hours per week if the PCP has less than 2,000 linkages.

ii. PCPs must attest to their intent to implement extended office hours by January 31, 2011.

iii. Extended office hours must be in place by March 31, 2011 in order for the first quarterly payment to be made. Payment for the second quarter will only be paid if extended office hours are verified.

d. Emergency Room Utilization. A quarterly payment will be implemented as an incentive to decrease inappropriate utilization and the need for emergency room (ER) services by CommunityCARE 2.0 recipients. Compliance will be measured through claims data.

i. A payment of \$0.75 PMPM will be made if ER utilization by linked recipients is in the lowest quartile (at or below the twenty-fifth percentile) for utilization of ER levels 1 and 2 for the reporting quarter.

ii. A payment of \$0.50 PMPM will be made if ER utilization by linked recipients is in the second lowest quartile (at or below the twenty-sixth to fiftieth percentile) for utilization of ER levels 1 and 2 for the reporting quarter.

iii. A payment of \$0.25 PMPM will be made if ER utilization by linked recipients is in the third lowest quartile (at or below the fifty-first to seventy-fifth percentile) for utilization of ER levels 1 and 2 for the reporting quarter. For the first six months of the program, a PCP ranking in the third lowest quartile will be eligible for payment. After six months in the third lowest quartile, the PCP will not qualify for a payment.

C. Pay-for Performance Incentive Pool

1. Funds shall be set aside for disbursement of P4P payments to participating PCPs who meet the participation requirements and performance measures set forth in this Chapter.

2. The P4P payments will be on a per member per month (PMPM) basis and will be reimbursed to qualified PCPs on a quarterly basis (the month following the end of the performance measurement quarter).

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 37:

**§2919. CommunityCARE 2.0 Quality Committee**

A. A quality committee will be established by the department to advise the secretary concerning health care quality, on-going quality improvement opportunities and recommendations for changes in the distribution of the pay-for-performance pool.

B. The committee shall consist of 15 members appointed by the secretary and will include representatives of stakeholders and providers as well as departmental staff. The committee shall be chaired by the Medicaid medical director and staffed by the department.

C. The CommunityCARE 2.0 Quality Committee shall meet, at a minimum, the first month of each quarter and as deemed necessary by the secretary.

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 37:

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.

Bruce D. Greenstein  
Secretary

1111#052

## DECLARATION OF EMERGENCY

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

Direct Service Worker Registry  
(LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 92 as authorized by R.S. 40:2179-2179.1. 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 the directives of Act 306 of the 2005 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the establishment and maintenance of the Direct Service Worker (DSW) Registry and defined the qualifications and requirements for direct service workers (*Louisiana Register*, Volume 32, Number 11). The November 20, 2006 Rule was amended to further clarify the provisions governing the DSW registry (*Louisiana Register*, Volume 33, Number 1). The department amended the provisions governing the training curriculum for direct service workers to require that licensed providers and other state approved training entities that wish to conduct training for direct service workers, and do not have an approved training curriculum, must use the department-approved training curriculum (*Louisiana Register*, Volume 35, Volume 11).

House Concurrent Resolution (HCR) 94 of the 2010 Regular Session of the Louisiana Legislature suspended LAC.48.I.9201-9203 and directed the department to adopt new provisions governing the DSW Registry which will eliminate duplicative regulations and streamline the DSW process. In compliance with the directives of HCR 94, the department promulgated an Emergency Rule which amended the provisions governing the DSW Registry in order to create a more manageable and efficient DSW process (*Louisiana Register*, Volume 37, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2010 Emergency Rule.

This action is being taken to protect the health and well-being of Louisiana citizens who receive care from direct service workers, and to eliminate the risks associated with services rendered by direct service workers who have committed substantiated acts of abuse, neglect, or exploitation.

Effective December 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Direct Service Workers Registry.

## Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

##### Subpart 3. Health Standards

#### Chapter 92. Direct Service Worker

##### Registry Subchapter A. General Provisions

#### §9201. Definitions

\* \* \*

*Employer*—an individual or entity that pays an individual wages or a salary for performing a job.

\* \* \*

*Finding*—allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department following a decision by an administrative law judge or a court of law after all appeal delays afforded by law or allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department as a result of failure to timely request an appeal in accordance with this rule.

\* \* \*

*Provider*—an entity that furnishes care and services to consumers and has been licensed by the Department of Health and Hospitals to operate in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### §9202. Introduction

A. The Department of Health and Hospitals (DHH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, exploitation or extortion have been substantiated by the department, an administrative law judge or a court of law.

B. The Direct Service Worker Registry will contain the following items on each individual for whom a finding has been placed:

1. name;
  - a. - i.v. Repealed.
2. address;
3. Social Security number;
4. telephone number;
5. state registration number;
6. an accurate summary of finding(s); and
7. information relative to registry status which will be available through procedures established by the Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section (HSS).

C. Employers must use the registry to determine if there is a finding that a prospective hire has abused or neglected an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Subchapter B. Training and Competency Requirements**

##### **§9211. General Provisions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### **§9213. Trainee Responsibilities**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### **§9215. Training Curriculum**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:96 (January 2007), LR 35:2437 (November 2009), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### **§9217. Training Coordinators**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### **§9219. Competency Evaluation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### **§9221. Compliance with Training and Competency Evaluation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Subchapter C. Provider Participation**

##### **§9231. Provider Responsibilities**

A. Prior to hiring any direct service worker or trainee, a licensed provider shall:

1. assure that the individual is at least 18 years of age, and that they have the ability to read, write and carry out directions competently as assigned; and

2. access the registry to determine if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

B. The provider shall check the registry every six months to determine if any currently employed direct service worker or trainee has been placed on the registry with a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

1. The provider shall maintain printed confirmation from the registry web site as verification of compliance with this procedure.

C. - E.2 Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Subchapter E. Violations**

##### **§9271. Disqualification of Training Programs**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

##### **§9273. Allegations of Direct Service Worker Wrong-Doing**

A. The Department, through the Division of Administrative Law, or its successor, has provided for a process of the review and investigation of all allegations of wrong-doing by direct service workers. Direct service workers and trainees must not:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **Subchapter F. Administrative Hearings**

##### **§9285. General Provisions**

A. ...

1. The request for an administrative hearing must be made in writing to the Division of Administrative Law, or its successor.

2. ...

3. Unless a timely and proper request is received by the Division of Administrative Law or its successor, the findings of the department shall be considered a final and binding administrative determination.

a. ...

B. When an administrative hearing is scheduled, the Division of Administrative Law, or its successor, shall notify

the direct service worker, his/her representative and the agency representative in writing.

1. - 1.c....

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the following procedures.

1. - 8. ...

9. When the allegation(s) supporting placement of a finding is substantiated, the direct service worker may not rest on the mere denial in his/her testimony and/or pleading(s) but must set forth specific facts and produce evidence to disprove or contest the allegation(s).

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **§9287. Preliminary Conferences**

A. - A.6....

B. When the Division of Administrative Law, or its successor, schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:99 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

#### **§9293. Failure to Appear at Administrative Hearings**

A. If a direct service worker fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Division of Administrative Law, or its successor, dismissing the appeal. A copy of the notice shall be mailed to each party.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006), amended LR 33:100 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#053

## **DECLARATION OF EMERGENCY**

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

Early and Periodic Screening, Diagnosis and Treatment  
Substance Abuse Services  
(LAC 50:XV.Chapter 93)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 93 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 terminated coverage and reimbursement of substance abuse clinic services under the Medicaid Program as a result of a budgetary shortfall (*Louisiana Register*, Volume 27, Number 1). However, in compliance with federal regulations governing coverage of discretionary services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, substance abuse services continued to be available to Medicaid recipients up to the age of 21 through the substance abuse clinics operated or funded by the Office for Addictive Disorders (OAD), now the Office of Behavioral Health (OBH).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted the provisions governing the coverage and reimbursement of substance abuse services rendered to EPSDT recipients (*Louisiana Register*, Volume 37, Number 5). This Emergency Rule is being promulgated to continue the provisions of the April 22, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid eligible recipients, up to the age 21, who are in need of substance abuse services, and to assure continued access to services.

Effective December 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing adopts the provisions governing Medicaid coverage of substance abuse services covered under the Early and Periodic Screening, Diagnosis and Treatment Program.

#### **Title 50**

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

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

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

#### **Chapter 93. Substance Abuse Services**

#### **§9301. General Provisions**

A. The Medicaid Program shall provide coverage of substance abuse services rendered to Medicaid eligible recipients, under the age of 21.

B. Medicaid reimbursement for medically necessary substance abuse services shall only be provided to the Office of Behavioral Health for recipients under the age of 21.

C. Substance abuse services covered under the EPSDT Program shall include medically necessary clinic services and other medically necessary substance abuse services rendered to EPSDT recipients.

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 37:

### **§9303. Reimbursement Methodology**

A. The Medicaid Program shall provide reimbursement to the Office of Behavioral Health for substance abuse services rendered to EPSDT recipients.

B. Reimbursement for these services shall be based on the most recent actual cost to OBH. Cost data shall be derived from the department's ISIS reporting of costs for the period. The cost period shall be consistent with the state fiscal year. Costs are determined by selecting the expenditures paid from state and local funds for the state fiscal year.

C. OBH encounter data from their database shall be used to identify allowable services. Encounter data for recipients under the age of 21 shall be extracted and used in calculations to determine actual cost to OBH.

D. Costs shall be calculated by using the cost-weighted amount and include Medicaid eligibles under 21 database costs divided by total database costs times OBH's expenditures for the program which were derived from the state's ISIS data.

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 37:

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.

Bruce D. Greenstein  
Secretary

1108#054

## **DECLARATION OF EMERGENCY**

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

Federally Qualified Health Centers  
Fluoride Varnish Applications  
(LAC 50:XI.10301 and 10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.10301 and §10701 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 amended the provisions governing federally qualified health centers (FQHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 37, Number 9)*. The department now proposes to amend the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients.

This action is being taken to promote the health and welfare of Medicaid recipients. It is estimated that implementation of this Emergency Rule will increase expenditures for federally qualified health center services by approximately \$9,480 for state fiscal year 2011-2012.

Effective December 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing federally qualified health centers.

### **Title 50**

## **PUBLIC HEALTH—MEDICAL ASSISTANCE**

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

#### **Subpart 13. Federally-Qualified Health Centers**

#### **Chapter 103. Services**

#### **§10301. Scope of Services**

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the FQHC.

1. Fluoride varnish applications shall be reimbursed when performed in the FQHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the recommended American Academy of Family Practice approved training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the FQHC.

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 30:2328 (October 2004), re promulgated LR 30:2487 (November 2004), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2927 (September 2011), LR 37:

#### **Chapter 107. Reimbursement Methodology**

#### **§10701. Prospective Payment System**

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the FQHC encounter rate.



a. Fluoride varnish applications shall only be reimbursed to the FQHC when performed on the same date of service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - 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 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011), LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#041

## DECLARATION OF EMERGENCY

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

Inpatient Hospital Services  
Major Teaching Hospitals  
Qualifying Criteria  
(LAC 50:V.1301-1309)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:V.1301-1309 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 that established the reimbursement of major and minor teaching hospitals as peer groups under the prospective reimbursement methodology for hospitals (*Louisiana Register*, Volume 20, Number 6). The department amended the June 20, 1994 Rule to adopt new criteria for the reimbursement of graduate medical education (GME) pursuant to Section 15 Schedule 09 of Act 19 of the 1998 Regular Session of the Louisiana Legislature and R.S. 39:71 et seq (*Louisiana Register*, Volume 26, Number 3).

Act 347 of the 2009 Regular Session of the Louisiana Legislature revised the qualifying criteria for major teaching hospitals. In compliance with Act 347, the department promulgated an Emergency Rule which amended the

provisions governing the qualifying criteria for major teaching hospitals. This Emergency Rule also repromulgated the March 20, 2000 Rule governing teaching hospitals in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 6). The department now proposes to amend the July 1, 2010 Emergency rule to clarify the qualifying criteria for a major teaching hospital. 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 November 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the July 1, 2010 Emergency Rule governing inpatient hospital services rendered by non-rural, non-state hospitals designated as teaching hospitals.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part V. Hospital Services

##### Subpart 1. Inpatient Hospital Services

#### Chapter 13. Teaching Hospitals

##### Subchapter A. General Provisions

#### §1301. Major Teaching Hospitals

A. The Louisiana Medical Assistance Program's recognition of a major teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the Liaison Committee on Medical Education (LCME). A major teaching hospital shall meet one of the following criteria:

1. be a major participant in at least four approved medical residency programs and maintain an intern and resident full-time equivalency of at least 15 filled positions. At least two of the programs must be in medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry; or

2. maintain an intern and resident full-time equivalency of at least 20 filled positions with an approved medical residency program in family practice located more than 150 miles from the medical school accredited by the LCME.

B. For the purposes of recognition as a major teaching hospital, a facility shall be considered a "major participant" in a graduate medical education program if it meets the following criteria. The facility must:

1. pay for all of the costs of the training program in the non-hospital or hospital setting, including:

- a. the residents' salaries and fringe benefits;
- b. the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education; and
- c. other direct administrative costs of the program;

and

2. participate in residency programs that:

a. require residents to rotate for a required experience;

b. require explicit approval by the appropriate Residency Review Committee (RRC) of the medical school with which the facility is affiliated prior to utilization of the facility; or

c. provide residency rotations of more than one sixth of the program length or more than a total of six months at the facility and are listed as part of an accredited

program in the *Graduate Medical Education Directory* of the Accreditation Council for Graduate Medical Education (ACGME).

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 37:

### **§1303. Minor Teaching Hospitals**

A. The Louisiana Medical Assistance Program's recognition of a minor teaching hospital is limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the LCME. A minor teaching hospital shall meet the following criteria:

1. must participate significantly in at least one approved medical residency program in either medicine, surgery, obstetrics/gynecology, pediatrics, family practice, emergency medicine or psychiatry; and

2. maintain an intern and resident full time equivalency of at least six filled positions.

B. For the purposes of recognition as a minor teaching hospital, a facility is considered to "participate significantly" in a graduate medical education program if it meets the following criteria. The facility must:

1. pay for all of the costs of the training program in the non-hospital or hospital setting, including:

a. the residents' salaries and fringe benefits;

b. the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education; and

c. other direct administrative costs of the program; and

2. participate in residency programs that:

a. require residents to rotate for a required experience;

b. require explicit approval by the appropriate

Residency Review Committee of the medical school with which the facility is affiliated prior to utilization of the facility; or

c. provide residency rotations of more than one sixth of the program length or more than a total of six months at the facility and are listed as part of an accredited program in the *Graduate Medical Education Directory* of the Accreditation Council for Graduate Medical Education.

i. If not listed, the sponsoring institution must have notified the ACGME, in writing, that the residents rotate through the facility and spend more than 1/6th of the program length or more than a total of six months at the facility.

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 37:

### **§1305. Approved Medical Residency Program**

A. An approved medical residency program is one that meets one of the following criteria:

1. counts toward certification of the participant in a specialty or sub-specialty listed in the current edition of either *The Directory of Graduate Medical Education Programs* published by the American Medical Association, Department of Directories and Publications, or *The Annual Report and Reference Handbook* published by the American Board of Medical Specialties;

2. is approved by the ACGME as a fellowship program in geriatric medicine; or

3. is a program that would be accredited except for the accrediting agency's reliance upon an accreditation standard that requires an entity to perform an induced abortion or require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training regardless of whether the standard provides exceptions or exemptions.

B. A residency program at a non-hospital facility may be counted by a hospital if:

1. there is a written agreement with the non-hospital facility that requires the hospital facility to pay for the cost of the training program; and

2. the agreement requires that the time that residents spend in the non-hospital setting is for patient care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

### **§1307. Graduate Medical Education**

A. The bureau adopts criteria for the reimbursement of graduate medical education (GME) in facilities that do not qualify as major or minor teaching facilities. GME recognized by the Medical Assistance Program for reimbursement shall be limited to facilities having a documented affiliation agreement with a Louisiana medical school accredited by the LCME.

B. Payment for GME costs shall be limited to the direct cost of interns and residents in addition to the teaching physician supervisory costs. Teaching physician supervisory costs shall be limited in accordance with the provisions of the Medicare Provider Reimbursement Manual. The GME component of the rate shall be based on hospital specific graduate medical education Medicaid cost for the latest year on which hospital prospective reimbursements are rebased trended forward in accordance with the prospective reimbursement methodology for hospitals.

C. Hospitals implementing GME programs approved after the latest year on which hospital prospective reimbursements have been rebased shall have a GME component based on the first full cost reporting period that the approved GME program is in existence trended forward in accordance with the prospective reimbursement methodology for hospitals.

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 37:

### **§1309. Requirements for Reimbursement**

A. Qualification for teaching hospital status or to receive reimbursement for GME costs shall be re-established at the beginning of each fiscal year.

B. To be reimbursed as a teaching hospital or to receive reimbursement for GME costs, a facility shall submit the following documentation to the Bureau of Health Services, Program Operations Section within 30 days of the beginning of each state fiscal year:

1. a copy of the executed affiliation agreement for the time period for which the teaching hospital status or GME reimbursement applies;

2. a copy of any agreements with non-hospital facilities; and

3. a signed Certification For Teaching Hospital Recognition.

C. Each hospital which is reimbursed as a teaching hospital or receives reimbursement for GME costs shall submit the following documentation to the Bureau of Health Services, Program Operations Section, within 90 days of the end of each state fiscal year:

1. a copy of the Intern and Resident Information

System report that is submitted annually to the Medicare intermediary; and

2. a copy of any notice given to the ACGME that residents rotate through a facility for more than one sixth of the program length or more than a total of six months.

D. Copies of all contracts, payroll records and time allocations related to graduate medical education must be maintained by the hospital and available for review by the state and federal agencies or their agents upon request.

E. No teaching hospital shall receive a per diem rate greater than 115 percent of its facility specific cost based on the latest rebasing year trended forward to the rate year in accordance with the prospective reimbursement methodology for hospitals.

F. The peer group maximum for minor teaching hospitals shall be the peer group maximum for minor teaching hospitals or the peer group maximum for peer group five, whichever is greater.

G. If it is subsequently discovered that a hospital has been reimbursed as a major or minor teaching hospital and did not qualify for that peer group for any reimbursement period, retroactive adjustment shall be made to reflect the correct peer group to which the facility should have been assigned. The resulting overpayment will be recovered through either immediate repayment by the hospital or recoupment from any funds due to the hospital from 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 37:

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.

Bruce D. Greenstein  
Secretary

1111#042

## DECLARATION OF EMERGENCY

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

Inpatient Hospital Services  
Small Rural Hospitals  
Low Income and Needy Care Collaboration  
(LAC 50:V.1125)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 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). The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to small rural 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 action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program. It is estimated that the implementation of this proposed Rule will increase expenditures for inpatient hospital services by approximately \$23,661,365 for state fiscal year 2011-2012.

Effective October 20, 2011, the Department of Health and Hospitals, 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. - D. ...

E. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments shall be issued to qualifying 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-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.

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 LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#002

## 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 promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This action is being taken to continue the provisions of the August 1, 2010 Emergency Rule. 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.

Effective November 28, 2011, the Department of Health and Hospitals, 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 37:

#### §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 37:

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.

Bruce D. Greenstein  
Secretary

1111#055

## 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 promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the August 1, 2010 Emergency Rule governing

the reimbursement methodology for non-state ICFs/DD in order to exclude certain facilities from the rate reduction (*Louisiana Register*, Volume 36, Number 12). This Emergency Rule is being promulgated to continue the provisions of the December 20, 2010 Emergency Rule. This action is being taken to avoid a budget deficit in 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.

Effective November 28, 2011, 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.

## 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 (ICFs/DD) shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

1. Effective for dates of service on or after December 20, 2010, non-state ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be 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 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 37:

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.

Bruce D. Greenstein  
Secretary

1111#056

## DECLARATION OF EMERGENCY

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

Nursing Facilities  
Reimbursement Methodology  
Low Income and Needy Care Collaboration  
(LAC 50:II.20023)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:II.20023 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 if the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing the reimbursement methodology for nursing facilities to adopt provisions to establish a supplemental Medicaid payment for nursing facilities who enter into an agreement with a state or local governmental entity for the purpose of providing health care services to low income and needy patients. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$375,410,716 for FY 2011-12.

Effective November 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to establish a supplemental Medicaid payment to nursing facilities who participate in the Low Income and Needy Care Collaboration.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part II. Nursing Facilities

#### Subpart 5. Reimbursement

#### Chapter 200. Reimbursement Methodology

#### §20023. Low Income and Needy Care Collaboration

A. Effective for dates of service on or after November 1, 2011, quarterly supplemental payments shall be issued to qualifying nursing facilities for services rendered during the quarter. Maximum aggregate payments to all qualifying nursing facilities shall not exceed the available upper payment limit per state fiscal year.

B. Qualifying Criteria. In order to qualify for the supplemental payment, the nursing facility must be affiliated with a state or local governmental entity through a Low Income and Needy Care Nursing Facility Collaboration Agreement.

1. A *nursing facility* is defined as a currently licensed and certified nursing facility which is owned or operated by a private entity or non-state governmental entity.

2. A *Low Income and Needy Care Nursing Facility Collaboration Agreement* is defined as an agreement between a nursing facility and a state or local governmental

entity to collaborate for purposes of providing healthcare services to low income and needy patients.

C. Each qualifying nursing facility shall receive quarterly supplemental payments for nursing facility services. Quarterly payment distribution shall be limited to one-fourth of the aggregated difference between each qualifying nursing facility's Medicare rate and Medicaid payments the nursing facility receives for covered services provided to Medicaid recipients during a 12 consecutive month period. Medicare rates in effect for the dates of service included in the supplemental payment period will be used to establish the upper payment limit. Medicaid payments will be used for the same time 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 37:

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.

Bruce D. Greenstein  
Secretary

1111#004

## DECLARATION OF EMERGENCY

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

Outpatient Hospital Services  
Small Rural Hospitals

Low Income and Needy Care Collaboration  
(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). The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the reimbursement methodology for outpatient hospital services to provide for a supplemental Medicaid payment to small

rural 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 action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program. It is estimated that the implementation of this proposed Rule will increase expenditures for outpatient hospital services by approximately \$31,309,912 for state fiscal year 2011-2012.

Effective October 20, 2011, the Department of Health and Hospitals, 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. Hospital Services**

##### **Subpart 5. Outpatient Hospital Services**

#### **Chapter 53. Outpatient Surgery**

##### **Subchapter B. Reimbursement Methodology**

###### **§5311. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying 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-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. 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 37:

## **Chapter 55. Clinic Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5511. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient hospital 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-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 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. 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 37:

## **Chapter 57. Laboratory Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5711. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient 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-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 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. 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 37:

## **Chapter 59. Rehabilitation Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5911. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient 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-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 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. 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 37:

## **Chapter 61. Other Outpatient Hospital Services**

### **Subchapter B. Reimbursement Methodology**

#### **§6113. Small Rural Hospitals**

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient facility fees 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-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 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. 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 37:

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.

Bruce D. Greenstein  
Secretary

1111#001

## DECLARATION OF EMERGENCY

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

#### 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 promulgated an Emergency Rule which amended 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 (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the September 5, 2010 Emergency Rule to clarify the provisions of the Rule (*Louisiana Register*, Volume 36, Number 12). The department promulgated an Emergency Rule which amended the provisions of the December 20, 2010 Emergency Rule to further clarify the provisions of the Rule (*Louisiana Register*, Volume 37, Number 4). The department now proposes to amend the provisions of the April 20, 2011 Emergency Rule to bring provisions in line with current licensing standards. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective November 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions of

the April 20, 2011 Emergency Rule 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 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 disagrees with his/her allocation of weekly service hours, the applicant/recipient or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may qualify for more hours if it can be demonstrated that:

a. one or more answers to the questions involving late-loss ADLs are incorrect as recorded on the assessment; or

b. he/she needs additional hours to avoid entering into a nursing facility.

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 - 4. 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 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 37:

#### **§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 37:

#### **§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. - 5. ...

6. ambulation;

7. toileting; and

8. bed mobility.

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;

8. reminding the recipient to take his/her medication as prescribed by the physician; and

9. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

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. ...

E. La POP participants may choose to use their services budgets to pay for items that increase their independence or substitute for their dependence on human assistance. Such items must be purchased in accordance with the policies and procedures established by OAAS.G. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

F. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

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 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 37:

#### **§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:

1. meets the medical standards for admission to a nursing facility and requires limited assistance with at least one or more activities of daily living;

B.2. - 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 37:

#### **§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 37:

#### **§12909. Standards for Participation**

A. - A.1.c. ...

d. any federal or state laws, Rules, regulations, policies and procedures contained in the Medicaid provider manual for personal care services, or other document issued by the department. Failure to do may result in sanctions.

A.2. ...

B. In addition, a Medicaid enrolled agency must:

1. maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department or its designee; and

2. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

B.3 - B.12.c. Repealed.

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 37:

#### **§12910. La POP Standards for Participation**

A. Direct service workers employed under LA POP must meet the same requirements as those hired by a PCS agency.

B. All workers must be employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

B.1. - 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 Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 37:

#### **§12911. Staffing Requirements**

A. All staff providing direct care to the recipient, whether they are employed by a PCS agency or a recipient participating in La POP, must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. - B.3. ...

C. Restrictions

1. The following individuals are prohibited from being reimbursed for providing services to a recipient:

- a. the recipient's spouse;
- b. the recipient's curator;
- c. the recipient's tutor;
- d. the recipient's legal guardian;
- e. the recipient's designated responsible representative; or

f. the person to whom the recipient has given Representative and Mandate authority (also known as Power of Attorney).

D. - E.1.b. 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 30:2832 (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 37:

#### **§12912. Training**

A. Training costs for direct service workers employed by La POP participants shall be paid out of the La POP participant's personal supports plan budget.

B. - H. 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 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 37:

#### **§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. The provision of services outside of the recipient's home does not include trips outside of the borders of the state without written prior approval of OAAS or its designee, through the plan of care or otherwise.

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 Financing and the Office of Aging and Adult Services, LR 37:

#### **§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 37:

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.

Bruce D. Greenstein  
Secretary

1111#046

## DECLARATION OF EMERGENCY

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

Pregnant Women Extended Services  
Substance Abuse Screening and Intervention Services  
(LAC 50:XV.Chapter 163)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 163 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 provides expanded coverage of certain dental services rendered to Medicaid eligible pregnant women who are in need of periodontal treatment as a means of improving the overall health of mothers and their newborns (*Louisiana Register*, Volume 30, Number 3).

As part of the Department of Health and Hospital's ongoing initiative to improve birth outcomes in the state, the Bureau of Health Services Financing, in collaboration with the Office of Behavioral Health, promulgated and Emergency Rule which adopted provisions to establish Medicaid coverage for substance abuse screening and brief intervention services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 37, Number 4). Research has shown that tobacco dependence and substance abuse intervention programs targeted to pregnant women improves the overall health of the mother and reduces the occurrences of low birth-weight babies and perinatal deaths. It is anticipated that these new services will improve birth outcomes and subsequently reduce Medicaid costs associated with the care of pregnant women and their babies. This Emergency Rule is being promulgated to continue the provisions of the April 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid eligible pregnant women and to reduce the Medicaid costs associated with the care of pregnant women and their babies.

Effective November 29, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to provide Medicaid coverage of substance abuse screening and brief interventions rendered to Medicaid eligible pregnant women.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 13. Pregnant Women Extended Services

#### Chapter 163. Substance Abuse Screening and Intervention Services

#### §16301. General Provisions

A. Effective for dates of service on or after April 1, 2011, the department shall provide coverage of substance abuse screening and brief intervention services rendered to Medicaid eligible pregnant women.

B. Substance abuse screening and intervention services may be performed at the discretion of the medical professional providing care to the pregnant woman.

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 37:

#### §16303. Scope of Services

A. Screening services shall include the screening of pregnant women for the use of:

1. alcohol;
2. tobacco; and/or
3. drugs.

B. Intervention services shall include a brief 15-30 minute counseling session with a health care professional intended to help motivate the recipient to develop a plan to moderate their use of alcohol, tobacco, or drugs.

C. Service Limits. Substance abuse screening and intervention services shall be limited to one occurrence each per pregnancy, or once every 270 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, LR 37:

#### §16305. Reimbursement Methodology

A. Effective for dates of service on or after April 1, 2011, the Medicaid Program shall provide reimbursement for substance abuse screening and intervention services rendered to Medicaid eligible pregnant women.

B. Reimbursement for these services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

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 37:

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.

Bruce D. Greenstein  
Secretary

1111#058

## DECLARATION OF EMERGENCY

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

Professional Services Program  
Fluoride Varnish Applications  
(LAC 50:IX.Chapter 9 and 15105)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.Chapter 9 and §15105 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 hereby amends the provisions governing the Professional Services Program in order to establish Medicaid reimbursement for fluoride varnish application services rendered by qualified providers in a physician office setting. The department anticipates that coverage of this service will reduce and/or prevent future oral health problems that could have a negative effect on the overall health of children and may reduce the Medicaid cost associated with the treatment of such oral health conditions.

This action is being taken to promote the health and welfare of Medicaid recipients. It is estimated that implementation of this Emergency Rule will increase expenditures in the Professional Services Program by approximately \$613,045 for state fiscal year 2011-2012.

Effective December 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Professional Services Program.

#### **Title 50**

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

#### **Part IX. Professional Services Program**

##### **Subpart 1. General Provisions**

#### **Chapter 9. Fluoride Varnish Application Services**

##### **§901. General Provisions**

A. Effective for dates of service on or after December 1, 2011, the department shall provide Medicaid coverage of fluoride varnish application 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, Bureau of Health Services Financing, LR 37:

##### **§903. Scope of Services**

A. Fluoride varnish application services performed in a physician office setting shall be reimbursed by the Medicaid Program when rendered by the appropriate professional services 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, LR 37:

##### **§905. Provider Participation**

A. The entity seeking reimbursement for fluoride varnish application services must be an enrolled Medicaid provider in the Professional Services Program. The following Medicaid enrolled providers may receive reimbursement for fluoride varnish applications:

1. physicians;
2. nurse practitioners; and
3. physician assistants.

B. The following providers who have been deemed as competent to perform the service by the certified physician may perform fluoride varnish application services in a physician office setting:

1. the appropriate dental providers;
2. physicians;
3. physician assistances;
4. nurse practitioners;
5. registered nurses; or
6. licensed practical nurses.

C. Professional service providers shall review the recommended American Academy of Family Practice

approved training module for fluoride varnish and successfully pass the post assessment.

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 37:

#### **Subpart 15. Reimbursement**

### **Chapter 151. Reimbursement Methodology**

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

##### **§15105. Fluoride Varnish Application Services**

A. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall provide reimbursement for fluoride varnish application services rendered by qualified health care professionals in a physician office setting.

B. Reimbursement for fluoride varnish application services shall be a flat fee based on the appropriate HCPCS code.

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 37:

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.

Bruce D. Greenstein  
Secretary

1111#047

### **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 promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse outpatient hospital services up to the Medicare outpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. 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.

Effective November 28, 2011, the Department of Health and Hospitals, 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 37:

##### **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 37:

##### **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 37:

##### **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 37:

##### **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 37:

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.

Bruce D. Greenstein  
Secretary

1111#057

## **DECLARATION OF EMERGENCY**

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

Rural Health Clinics  
Fluoride Varnish Applications  
(LAC 50:XI.16301 and 16701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XI.16301 and §16701 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 amended the provisions governing rural health clinics (RHCs) to provide Medicaid reimbursement for diabetes self-management training services and to reorganize the existing provisions governing provider participation and services in a more clear and concise manner in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 37, Number 9). The department now proposes to amend the September 20, 2011 Rule to adopt provisions for the coverage of fluoride varnish application services rendered to Medicaid recipients.

This action is being taken to promote the health and welfare of Medicaid recipients. It is estimated that implementation of this Emergency Rule will increase expenditures for rural health clinic services by approximately \$9,480 for state fiscal year 2011-2012.

Effective December 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing rural health clinics.

#### **Title 50**

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

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

#### **Subpart 15. Rural Health Clinics**

#### **Chapter 163. Services**

#### **§16301. Scope of Services**

A. - B.1. ...

C. Effective December 1, 2011, the department shall provide coverage for fluoride varnish applications performed in the RHC.

1. Fluoride varnish applications shall be reimbursed when performed in the RHC by:

- a. the appropriate dental providers;
- b. physicians;
- c. physician assistants;
- d. nurse practitioners;
- e. registered nurses; or
- f. licensed practical nurses.

2. All participating staff shall review the recommended American Academy of Family Practice approved training module for fluoride varnish and successfully pass the post assessment. All staff involved in the varnish application must be deemed as competent to perform the service by the RHC.

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 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2631 (September 2011), LR 37:

#### **Chapter 167. Reimbursement Methodology**

#### **§16701. Prospective Payment System**

A. - B.3.a. ...

4. Effective for dates of service on or after December 1, 2011, the Medicaid Program shall include coverage for fluoride varnish applications in the RHC encounter rate.

a. Fluoride varnish applications shall only be reimbursed to the RHC when performed on the same date of

service as an office visit or preventative screening. Separate encounters for fluoride varnish services are not permitted and the application of fluoride varnish does not constitute an encounter visit.

C. - 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 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011), LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#048

### **DECLARATION OF EMERGENCY**

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

Substance Abuse/Addictive Disorders Facilities  
Minimum Licensing Standards  
Physical Space Requirements Exemption  
(LAC 48:I.7403)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.7403 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:1058.1-9. 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 655 of the 2003 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the licensing standards for substance abuse/addiction treatment facilities to reflect the national accreditation standards for such facilities (*Louisiana Register*, Volume 31, Number 3).

Act 384 of the 2009 Regular Session of the Louisiana Legislature merged the Office for Addictive Disorders (OAD) with the Office for Mental Health (OMH) to form the Office of Behavioral Health (OBH). Existing licensing provisions for the facilities which came under the authority of OAD and OMH did not allow for the facilities to operate



in a common space after OBH was formed. Hence, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions of the March 20, 2005 Rule governing the minimum licensing standards for substance abuse/addictive disorders facilities in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated mental health center or mental health clinic. This action is being taken to promote the health and welfare of patients receiving services in these facilities. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2011-12.

Effective December 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing the minimum licensing standards for substance abuse/addictive disorders facilities.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Chapter 74. Substance Abuse/Addictive Disorders  
Treatment Facilities**

**Subchapter A. General Provisions**

**§7403. Licensing**

A. - C.4.f. ...

5. A state- or district-owned or operated substance abuse/addictive disorders facility operating in or with a state- or district-owned or operated mental health clinic shall be exempt from the physical space requirements for operating as separate entities.

a. This exemption shall apply to facilities created under the provisions of R.S. 29:911-920 or R.S. 28:831(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1453 (July 2000), LR 31:669 (March 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#050

**DECLARATION OF EMERGENCY**

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

Standards for Community Mental Health  
Physical Space Requirements Exemption  
(LAC 48:III.537)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend LAC 48:III.537 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:567-573. 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 Mental Health repromulgated all of the provisions governing the minimum licensing standards and policies for community mental health services rendered by mental health centers and clinics for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 13, Number 4)*.

Act 384 of the 2009 Regular Session of the Louisiana Legislature merged the Office for Addictive Disorders (OAD) with the Office for Mental Health (OMH) to form the Office of Behavioral Health (OBH). Existing licensing provisions for the facilities which came under the authority of OAD and OMH did not allow for the facilities to operate in a common space after OBH was formed. Hence, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions of the April 20, 1987 Rule governing the minimum licensing standards for community mental health centers and mental health clinics in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated substance abuse/addictive disorders facility. This action is being taken to promote the health and welfare of patients receiving services in these facilities. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2011-12.

Effective December 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing the minimum licensing standards for community mental health centers and mental health clinics.

**Title 48**  
**PUBLIC HEALTH—GENERAL**  
**Part III. Mental Health Services**  
**Chapter 5. Standards for Community Mental Health**  
**Subchapter A. Centers and Clinics**  
**§537. Facilities Management**

A. - C. ...

D. Exemption. A state- or district-owned or operated mental health clinic operating in or with a state- or district-owned or operated substance abuse/addictive disorders facility shall be exempt from the physical space requirements for operating as separate entities.

1. This exemption shall apply to facilities created under the provisions of R.S. 29:911-920 or R.S. 28:831(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:567-573.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Mental Health, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 37:

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.

Bruce D. Greenstein  
Secretary

1111#049

**DECLARATION OF EMERGENCY**  
**Department of Health and Hospitals**  
**Office of Public Health**

Added Use of Vital Records in Program Administration  
(LAC 48:V.11710)

The Department of Health and Hospitals, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted to the secretary of DHH by R.S. 40:962(C), hereby takes emergency action to rescind the Emergency Rule adopted October 6, 2011. This Emergency Rule is no longer necessary to avoid imminent peril to the public's health, safety, or welfare, and does not pose a threat to the public.

This action is being taken in accordance with the Administrative Procedure Act (R.S. 49:950 et seq.). The secretary, through DHH/OPH, finds it necessary to rescind the Emergency Rule effective immediately.

Bruce D. Greenstein  
Secretary

1111#005

**DECLARATION OF EMERGENCY**

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

2011-12 Oyster Season Closure

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on September 1, 2011 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if oyster resources and/or reefs are being adversely impacted, notice is hereby given that the Secretary of the Department of Wildlife and Fisheries hereby declares that the follow public oyster areas shall close at one-half hour after sunset on Friday, November 4, 2011:

Hackberry Bay Public Oyster Seed Reservation

Lake Chien and Lake Felicity Public Oyster Seed  
Grounds

Harvest pressure during the season has significantly reduced an already small oyster stock size and continued commercial harvest may threaten the long-term sustainability of remaining oyster resources in these areas. Protection of these remaining oyster reef resources from injury is in the best interest of the public oyster areas.

All other 2011/2012 oyster season details as outlined by the September 1, 2011 Declaration of Emergency passed by the Wildlife and Fisheries Commission, including the season and daily sack limits in Calcasieu Lake, shall remain in effect at this time.

Notice of any opening, delaying, or closing of a season will be provided 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.

Robert J. Barham  
Secretary

1111#019

**DECLARATION OF EMERGENCY**  
**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

Basin Area Deer Hunting Seasons

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and R.S. 56:115 and R.S. 56:116, which allows the Wildlife and Fisheries Commission to use emergency procedures to set deer hunting seasons, and due to the recent historic flooding of the Mississippi River and subsequent opening of the

Morganza spillway on May 14, 2011, the Wildlife and Fisheries Commission does hereby alter the previously established deer hunting seasons for 2011-12 hunting season, for the specific areas described below:

**Sherburne WMA:**

Deer:

Archery, bucks only: October 1-15

Archery, either-sex: October 16-February 15

Youth and Physically Challenged, either-sex: October 29-30; all other seasons closed. Self-clearing permits.

Youth Lottery, either-sex: October 29-30 and December 23, 26, 28 and 30.

Firearms, either-sex: November 25-26, mandatory deer check.

Firearms, bucks only: December 24-January 1

Primitive Firearms, either-sex: January 7-8

All lands within the Morganza floodway, from the Morganza control structure, south to I-10, and from I-10 south, within the protection levees of the Atchafalaya basin.

Archery, bucks only: October 1-15

Archery, either-sex: October 16-February 15

Still Hunt, either-sex: November 19-27

Still Hunt, bucks only: November 28-December 9

With or Without Dogs, either-sex: December 10-11

With or Without Dogs, bucks only: December 12-January 15

Primitive Firearms, bucks only: January 23-29

**Attakapas WMA:**

Deer:

Primitive Firearms, bucks only: January 23-29

These actions are being taken as a result of significant deer mortality estimated within the flood zone area identified above. The aforementioned 2011-2012 deer hunting seasons will become effective November 28, 2011.

Stephen W. Sagraera  
Chairman

1111#020

**DECLARATION OF EMERGENCY**

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

**Greater Amberjack Commercial Season Closure**

The commercial season for the harvest of greater amberjack in Louisiana state waters has previously been closed and then re-opened at 12:01 a.m. September 1, 2011. The secretary has been informed that the commercial season for greater amberjack in the federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m. on October 20, 2011, and will remain closed until 12:01 a.m. January 1, 2012, when the season is scheduled to re-open in both state and federal waters.

In accordance with the provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use seasonal rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for

saltwater finfish, and the authority given to the secretary of the department by the commission in its resolution of January 6, 2011 to modify opening and closing dates of 2011-2012 commercial reef fish seasons in Louisiana state waters when he is informed by the regional director of NOAA Fisheries that the seasons have been closed in adjacent federal waters, and that NOAA Fisheries requests that the season be modified in Louisiana state waters, the secretary hereby declares:

The commercial fisheries for greater amberjack in Louisiana waters will close at 11:59 p.m. on October 19, 2011, at which time the season will remain closed until 12:01 a.m., January 1, 2012. No person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell greater amberjack whether within or without Louisiana waters outside of the open dates and times set out herein. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing greater amberjack taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by NOAA Fisheries that the commercial greater amberjack season in federal waters of the Gulf of Mexico will close at 12:01 a.m. on October 20, 2011, and remain closed until 12:01 a.m., January 1, 2012. This Declaration of Emergency would close state waters two minutes prior to the federal waters closure, but the language would be consistent with other state fishery closures. This minor variance in closure time is to provide additional clarity on the closure. Having compatible season regulations in State waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of the species in the long term.

Robert J. Barham  
Secretary

1111#006

**DECLARATION OF EMERGENCY**

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

**Delay of Oyster Season**

In accordance with the emergency provisions of Louisiana Revised Statutes (R.S.) 49:953, under the authority of R.S. 56:433, R.S. 56:435.1 and R.S. 56:435.1.1(D), and under the authority of a Declaration of Emergency passed by the Wildlife and Fisheries Commission on October 6, 2011, notice is hereby given that the secretary of the Department of Wildlife and Fisheries hereby declares that the October 17, 2011 opening of the 2011/2012 oyster season on certain public oyster seed grounds and reservations shall be delayed until one-half hour before sunrise on Monday, October 31, 2011. These areas include:

1. primary public oyster seed grounds east of the Mississippi River, including Lake Borgne, Bay Gardene, and the sacking only areas in Lake Machias/Fortuna and American/Long Bay. The newly-constructed cultch plants in

Mississippi Sound and California Bay shall remain closed until further notice;

2. Hackberry Bay Public Oyster Seed Reservation;
3. Barataria Bay, Deep Lake, Lake Chien, Lake Felicity, Lake Tambour, and Lake Mechant Public Oyster Seed Grounds;
4. Sister Lake and Bay Junop Public Oyster Seed Reservations;
5. Vermilion/East and West Cote Blanche/Atchafalaya Bay Public Oyster Seed Grounds.

This oyster season delay is necessary to allow for natural resource damage assessment (NRDA) sampling in these public oyster seed grounds and reservations prior to harvest activity. This sampling is associated with the Deepwater Horizon oil spill incident.

At one-half hour before sunrise on October 31, 2011, the public oyster seed grounds and reservations listed above shall open. The Sabine Lake Public Oyster Area, the east side of Calcasieu Lake, and the 2011 cultch plants in Mississippi Sound and California Bay, within the following coordinates, shall remain closed until further notice.

**Mississippi Sound Cultch Plant Location**

1. 89 degrees 27 minutes 36.1946 seconds West  
30 degrees 07 minutes 26.9442 seconds North
2. 89 degrees 26 minutes 45.4830 seconds West  
30 degrees 07 minutes 07.1137 seconds North

3. 89 degrees 27 minutes 14.0934 seconds West  
30 degrees 06 minutes 40.9253 seconds North
4. 89 degrees 27 minutes 52.3921 seconds West  
30 degrees 07 minutes 17.5588 seconds North

**California Bay Cultch Plant Location**

1. 89 degrees 34 minutes 03.1900 seconds West  
29 degrees 30 minutes 40.4200 seconds North
2. 89 degrees 33 minutes 21.8500 seconds West  
29 degrees 30 minutes 27.1800 seconds North
3. 89 degrees 33 minutes 20.2400 seconds West  
29 degrees 29 minutes 54.9900 seconds North
4. 89 degrees 34 minutes 03.9300 seconds West  
29 degrees 30 minutes 02.7400 seconds North

All other 2011/2012 oyster season details as outlined by the September 1, 2011 Declaration of Emergency passed by the Wildlife and Fisheries Commission, including the season and daily sack limits in Calcasieu Lake, shall remain in effect at this time.

Notice of any opening, delaying or closing of a season will be provided 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.

Robert J. Barham  
Secretary

1111#003

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators (LAC 28: CXV.2318, 2319, 2325, and 2326)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2318. The College and Career Diploma, §2319. The Career Diploma, §2325. Advanced Placement and Military Service Credit, and §2326. Military Service Credit. The policy changes to these sections clarify which AP and IB courses substitute for core courses requirements, require schools to provide access to at least one AP course, make it easier to count AP and IB courses for the Academic Endorsement, change the name of the American History course to US History, and adds ChemCom to the Basic Core curriculum. These changes will encourage more students to take AP and IB courses and will increase access to AP courses.

## Title 28 EDUCATION

### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction §2318. The College and Career Diploma

A. - B.1.c. ...

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or U.S. History.

3 - 7.a. ...

C. Minimum Course Requirements

1. For incoming freshmen prior to 2008-2009, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units:

- i. English I;
- ii. English II;
- iii. English III\*;
- iv. English IV\* or Business English or Senior Applications in English.

b. Mathematics—3 units:

i. effective for incoming freshmen 2005-2006 and beyond:

(a) all students must complete one of the following:

- (i). Algebra I (1 unit); or

(ii). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or

(iii). Integrated Mathematics I (1 unit).

(b) The remaining unit(s) shall come from the following:

- (i). Integrated Mathematics II;
- (ii). Integrated Mathematics III;
- (iii). Geometry, Algebra II;
- (iv). Financial Mathematics;
- (v). Advanced Math—Pre-Calculus;
- (vi). Advanced Math—Functions and

Statistics;

- (vii). Pre-Calculus\*, Calculus\*;
- (viii). Probability and Statistics\*;
- (ix). Math Essentials; and
- (x). Discrete Mathematics.

c. Science—3 units:

i. 1 unit of Biology;

ii. 1 unit from the following physical science cluster:

- (a). Physical Science;
  - (b). Integrated Science;
  - (c). Chemistry I;
  - (d). Physics I\*\*;
  - (e). Physics of Technology I;
- iii. 1 unit from the following courses:

- (a). Aerospace Science;
- (b). Biology II\*;
- (c). Chemistry II\*;
- (d). Earth Science;
- (e). Environmental Science\*;
- (f). Physics II\*;
- (g). Physics of Technology II;
- (h). Agriscience II;
- (i). an additional course from the physical science cluster; or
- (j). a locally initiated science elective;

iv. students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

d. Social Studies—3 units:

i. U.S. History\*;

ii. Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise; and

iii. 1 of the following:

- (a). World History\*;
- (b). World Geography\*;
- (c). Western Civilization\*;
- (d). AP European History.

e. Health Education—1/2 unit.

f. Physical Education—1 1/2 units:

i. Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

ii. A maximum of 4 units of Physical Education may be used toward graduation.

Note: The substitution of JROTC is permissible.

- g. Electives—8 units
- h. Total—23 units

2. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana basic core curriculum, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

- a. English—4 units:
  - i. English I;
  - ii. English II;
  - iii. English III\*;
  - iv. English IV\* or Senior Applications in English.
- b. Mathematics—4 units:
  - i. all students must complete one of the following:
    - (a). Algebra I (1 unit);
    - (b). Applied Algebra I (1 unit); or
    - (c). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units).
  - ii. Geometry or Applied Geometry;
  - iii. the remaining unit(s) shall come from the following:
    - (a). Algebra II;
    - (b). Financial Mathematics;
    - (c). Math Essentials;
    - (d). Advanced Math—Pre-Calculus;
    - (e). Advanced Math—Functions and Statistics;
    - (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.

- c. Science—3 units:
  - i. 1 unit of Biology;
  - ii. 1 unit from the following physical science cluster:
    - (a). Physical Science;
    - (b). Integrated Science;
    - (c). Chemistry I, Physics I\*;
    - (d). Physics of Technology I;
  - iii. 1 unit from the following courses:
    - (a). Aerospace Science;
    - (b). Biology II\*;
    - (c). Chemistry II\*;
    - (d). Earth Science;
    - (e). Environmental Science\*;
    - (f). Physics II\*;
    - (g). Physics of Technology II;
    - (h). Agriscience II;
    - (i). Anatomy and Physiology;
    - (j). ChemCom;
    - (k). an additional course from the physical science cluster; or
    - (l). a locally initiated elective approved by BESE as a science substitute;
  - iv. students may not take both Integrated Science and Physical Science;
  - v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

d. Social Studies—3 units:

- i. U.S. History\*;
- ii. Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

- iii. 1 of the following:
  - (a). World History\*;
  - (b). World Geography\*;
  - (c). Western Civilization\*;
  - (d). AP European History.
- e. Health Education—1/2 unit:
  - i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.
- f. Physical Education—1 1/2 units:
  - i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;
  - ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

- g. Electives—8 units:
  - i. shall include the minimum courses required to complete a career area of concentration for incoming freshmen 2010-2011 and beyond.

(a). The Area of Concentration shall include one unit of Education for Careers or Journey to Careers.

h. Total—124 units.

3. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

- a. English—4 units:
  - i. English I;
  - ii. English II;
  - iii. English III\*;
  - iv. English IV\*.
- b. Mathematics—4 units:
  - i. Algebra I, Applied Algebra I, or Algebra I-Pt. 2;
  - ii. Geometry or Applied Geometry;
  - iii. Algebra II;
  - iv. the remaining unit shall come from the following:
    - (a). Financial Mathematics;
    - (b). Math Essentials;
    - (c). Advanced Math—Pre-Calculus;
    - (d). Advanced Math—Functions and Statistics;
    - (e). Pre-Calculus\*;
    - (f). Calculus\*;
    - (g). Probability and Statistics\*;
    - (h). Discrete Mathematics; or
    - (i). a locally initiated elective approved by BESE as a math substitute.
- c. Science—4 units:
  - i. 1 unit of Biology;
  - ii. 1 unit of Chemistry;
  - iii. 2 units from the following courses: Physical Science, Integrated Science, Physics I, Physics of

Technology I, Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II\*, Physics of Technology II, Agriscience II, Anatomy and Physiology, or a locally initiated elective approved by BESE as a science substitute;

iv. Students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course;

vi. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the fourth required science unit:

- (a). Advanced Nutrition and Foods;
- (b). Food Services II;
- (c). Allied Health Services II;
- (d). Dental Assistant II;
- (e). Emergency Medical Technician-Basic

(EMT-B);

- (f). Health Science II;
- (g). Medical Assistant II;
- (h). Sports Medicine III;
- (i). Advanced Electricity/Electronics;
- (j). Process Technician II;
- (k). ABC Electrical II;
- (l). Computer Service Technology II;
- (m). Horticulture II;
- (n). Networking Basics;
- (o). Routers and Routing Basics;
- (p). Switching Basics and Intermediate Routing;
- (q). WAN Technologies;
- (r). Animal Science;
- (s). Biotechnology in Agriscience;
- (t). Environmental Studies in Agriscience;
- (u). Equine Science;
- (v). Forestry;
- (w). Horticulture;
- (x). Small Animal Care/Management;
- (y). Veterinary Assistant; and
- (z). Oracle Academy Course: DB Programming

with PL/SQL.

d. Social Studies—4 units:

i. Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

ii. U.S. History\*;

iii. 1 unit from the following: World History\*, World Geography\*, Western Civilization, or AP European History;

iv. 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, Civics (second semester—1/2 credit) or African American Studies;

NOTE: Students may take two half credit courses for the fourth required social studies unit.

v. a student completing a career and technical area of concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the fourth required social studies unit:

- (a). Advanced Child Development;
- (b). Early Childhood Education II;
- (c). Family and Consumer Sciences II;
- (d). ProStart II;
- (e). T and I Cooperative Education (TICE);
- (f). Cooperative Agriculture Education;
- (g). Administrative Support Occupations;
- (h). Business Communication;
- (i). Cooperative Office Education;
- (j). Entrepreneurship—Business;
- (k). Lodging Management II;
- (l). Advertising and Sales Promotion;
- (m). Cooperative Marketing Education I;
- (n). Entrepreneurship—Marketing;
- (o). Marketing Management;
- (p). Marketing Research;
- (q). Principles of Marketing II;
- (r). Retail Marketing;
- (s). Tourism Marketing; CTE Internship;
- (t). General Cooperative Education II; STAR II.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Foreign language—2 units:

i. shall be 2 units in the same foreign language or 2 speech courses.

h. Arts—1 unit:

i. 1 unit Art (§2333), Dance (§2337), Media Arts (§2354), Music (§2355), Theatre Arts, (§2369), or Fine Arts Survey;

ii. a student completing a career and technical area of concentration may substitute one of the following BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the required applied arts unit:

- (a). Advanced Clothing and Textiles;
- (b). ABC Carpentry II TE;
- (c). ABC Electrical II TE;
- (d). ABC Welding Technology II;
- (e). Advanced Metal Technology;
- (f). Advanced Technical Drafting;
- (g). Architectural Drafting;
- (h). ABC Carpentry II—T&I;
- (i). ABC Welding Technology II—T and I;
- (j). Cabinetmaking II;
- (k). Commercial Art II;
- (l). Cosmetology II;
- (m). Culinary Occupations II;
- (n). Custom Sewing II;
- (o). Graphic Arts II;
- (p). Photography II;
- (q). Television Production II;
- (r). Upholstery II;
- (s). Welding II;
- (t). ABC Carpentry In Agriscience;

- (u). ABC Electricity in Agriscience;
- (v). ABC Welding Technology Agriscience;
- (w). Agriscience Construction Technology;
- (x). Agriscience Power Equipment;
- (y). Floristry;
- (z). Landscape Design and Construction;
- (aa). Introduction to Business Computer

Applications;

- (bb). Accounting II;
- (cc). Business Computer Applications;
- (dd). Computer Multimedia Presentations;
- (ee). Desktop Publishing;
- (ff). Keyboarding Applications;
- (gg). Telecommunications;
- (hh). Web Design I and II;
- (ii). Word Processing; and
- (jj). Digital Media II.

i. Electives—3 units.

j. Total—24 units.

4. High School Area of Concentration

a. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

i. Incoming freshmen prior to 2008-2009 can complete an academic area of concentration by completing the current course requirements for the Taylor Opportunity Program for Students (TOPS) Opportunity Award.

ii. Incoming freshmen in 2008-2009 and beyond can complete an academic area of concentration by completing the course requirements for the LA Core 4 curriculum.

iii. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of concentration are identified in the career options reporting system with each LEA designating the career and technical education areas of concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2
Digital Media I, II	1 each

5. Academic Endorsement

a. Graduating seniors who meet the requirements for a College and Career diploma and satisfy the following performance indicators shall be eligible for an academic endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall complete an academic area of concentration. Students graduating in 2011-2012 and beyond shall complete the following curriculum requirements.

NOTE: For courses indicated with \*, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

(a). English—4 units:

- (i). English I;
- (ii). English II;
- (iii). English III\*;
- (iv). English IV\*.

(b). Mathematics—4 units:

- (i). Algebra I or Algebra I-Pt. 2;
- (ii). Geometry;
- (iii). Algebra II;
- (iv). The remaining unit shall come from

the following:

- [a]. Advanced Math—Pre-Calculus;
- [b]. Advanced Math—Functions and Statistics;
- [c]. Pre-Calculus\*;
- [d]. Calculus\*;
- [e]. Probability and Statistics\*;
- [f]. Discrete Mathematics.

(c). Science—4 units:

- (i). Biology;
- (ii). Chemistry;
- (iii). 1 units of advanced science from the following courses: Biology II, Chemistry II, Physics, or Physics II;

(iv). 1 additional science course.

(d). Social Studies—4 units:

(i). Civics\* (1 unit) or 1/2 unit of Civics\* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

(ii). American History U.S. History\*\*;

(iii). 1 unit from the following: World History\*\*, World Geography\*\*, Western Civilization, or AP European History;

(iv). 1 unit from the following:

- [a]. World History;
- [b]. World Geography;
- [c]. Western Civilization;
- [d]. AP European History;
- [e]. Law Studies;
- [f]. Psychology;
- [g]. Sociology; or
- [h]. African American Studies.

(e). Health Education—1/2 unit:

(i). JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

(f). Physical Education—1 1/2 units:

(i). shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.



ii. Assessment Performance Indicator  
(a) Students graduating prior to 2013-2014 shall pass all four components of GEE with a score of *Basic* or above, or one of the following combinations of scores with the English language arts score at *Basic* or above:

(i) one *Approaching Basic*, one *Mastery* or *Advanced*, *Basic* or above in the remaining two; or  
(ii) two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;
- (iii). Biology and U.S. History.

iii. Students shall complete one of the following requirements:

(a). senior project;  
(b). one Carnegie unit in an AP course and attempt the AP exam;  
(c). one Carnegie unit in an IB course and attempt the IB exam; or  
(d). three college hours of non-remedial, articulated credit in:

- (i). mathematics;
- (ii). social studies;
- (iii). science;
- (iv). foreign language; or
- (v). English language arts.

iv. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

v. Students shall achieve an ACT composite score of at least 23 or the SAT equivalent.

#### 6. Career/Technical Endorsement

a. Students who meet the requirements for a college and career diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the college and career diploma.

i. Students graduating prior to 2011-2012 shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2011-2012 and beyond shall meet the course requirements for the Louisiana Core 4 Curriculum.

ii. Students shall complete the career area of concentration.

#### iii. Assessment Performance Indicator

(a). Students graduating prior to 2009-2010 shall pass the English language arts, mathematics, science, and social studies components of the GEE at the *Approaching Basic* level or above. Students graduating in 2009-2010 and beyond prior to 2013-2014 shall pass all four components of the GEE with a score of basic or above or one of the following combinations with the English language arts score at basic or above:

(i). one *Approaching Basic*, one *Mastery* or *Advanced*, and *Basic* or above in the remaining two;  
(ii). two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;
- (iii). Biology and U.S. History.

iv. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration (as defined in the *LDE Diploma Endorsement Guidebook*) or senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

(a). industry-based certification in student's area of concentration from the list of industry-based certifications approved by BESE; or

(b). three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours in student's area of concentration.

v. Students shall achieve a minimum GPA of 2.5.

vi. Students graduating prior to 2008-2009 shall achieve the current minimum ACT composite score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2008-2009 and beyond shall achieve a minimum ACT composite score (or SAT equivalent) of 20 or the state ACT average (whichever is higher) or the Silver Level on the WorkKeys Assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:3193 (November 2011).

### §2319. The Career Diploma

A. - B.1.c. ...

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a high school diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or U.S. History.

3. - 7.a. ...

#### C. Minimum Course Requirements

1. The minimum course requirements for a career diploma shall be the following.

a. English—4 units:

- i. English I;
- ii. English II;
- iii. the remaining units shall come from the following:

- (a). Technical Reading and Writing;
- (b). Business English;
- (c). Business Communications;
- (d). Using Research in Careers (1/2 credit);
- (e). American Literature (1/2 credit);
- (f). Film in America (1/2 credit);
- (g). English III;
- (h). English IV;
- (i). Senior Applications in English; or

(j). a course developed by the LEA and approved by BESE.

b. Mathematics—4 units:

i. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units);

ii. The remaining units shall come from the following:

- (a). Geometry or Applied Geometry;
- (b). Technical Math;
- (c). Medical Math;
- (d). Applications in Statistics and Probability;
- (e). Financial Math;
- (f). Math Essentials;
- (g). Algebra II;
- (h). Advanced Math—Pre-Calculus;
- (i). Discrete Mathematics; or
- (j). course(s) developed by the LEA and approved by BESE.

c. Science—3 units:

i. 1 unit of Biology;

ii. 1 unit from the following physical science cluster:

- (a). Physical Science;
- (b). Integrated Science;
- (c). Chemistry I;
- (d). ChemCom;
- (e). Physics I;
- (f). Physics of Technology I;

iii. 1 unit from the following courses:

- (a). Food Science;
- (b). Forensic Science;
- (c). Allied Health Science;
- (d). Basic Body Structure and Function;
- (e). Basic Physics with Applications;
- (f). Aerospace Science;
- (g). Earth Science;
- (h). Agriscience II;
- (i). Physics of Technology II;
- (j). Environmental Science;
- (k). Anatomy and Physiology;
- (l). Animal Science;
- (m). Biotechnology in Agriculture;
- (n). Environmental Studies in Agriculture;
- (o). Health Science II;
- (p). EMT—Basic;
- (q). an additional course from the physical science cluster; or

(r). course(s) developed by the LEA and approved by BESE.

d. Social Studies—3 units:

i. U.S. History;

ii. Civics (1 unit) or 1/2 unit of Civics and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. one of the following. The remaining unit shall come from the following:

- (a). Child Psychology and Parenthood Education;
- (b). Law Studies;
- (c). Psychology;
- (d). Sociology;

(e). World History;

(f). World Geography;

(g). Western Civilization;

(h). Economics;

(i). American Government;

(j). African American Studies; or

(k). a course developed by the LEA and approved by BESE.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Career and Technical Education—7 credits:

i. Education for Careers or Journey to Careers;

ii. six credits required for a career area of concentration.

h. Total—23 units.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:183.3; R.S. 17:274; R.S. 17:274.1; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 37:3197 (November 2011).

**§2325. Advanced Placement and International Baccalaureate**

A. Each high school shall provide students access to at least one advanced placement (AP) or international baccalaureate (IB) course.

B. High school credit shall be granted to a student successfully completing an AP course or an IB course, regardless of his test score on the examination provided by the college board or on the IB exam.

1. Procedures established by the college board must be followed.

2. Courses listed in the program of studies may be designated as advanced placement courses on the student's transcript by following procedures established by the DOE.

a. The chart below lists the college board AP course titles, the IB course titles, and the corresponding Louisiana course titles for which these courses can be substituted.

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
Art History		AP Art History
Biology	Biology II IB	Biology II
	Biology III IB	Biology Elective

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
Calculus AB	Math Methods II IB	Calculus
Calculus BC		AP Calculus BC
Chemistry		Chemistry II
Computer Science A		AP Computer Science A
Computer Science AB		AP Computer Science AB
Economics: Macro	Economics IB	Economics
Economics: Micro		AP Economics: Micro
English Language and Composition	English III IB	English III
English Literature and Composition	English IV IB	English IV
Environmental Science	Environmental Systems IB	Environmental Science
European History		AP European History
French Language	French IV IB	French IV
	Film Study I IB	Visual Arts Elective
	Film Study II IB	Visual Arts Elective
French Literature	French V IB	French V
German Language		German IV
Government and Politics: Comparative		AP Government and Politics: Comparative
Government and Politics: United States		AP Government and Politics: United States (substitute for Civics)
Human Geography	World Geography IB	World Geography
	Informational Technology IB	Computer Systems/Networking I
Latin Literature		Latin V
Latin: Vergil		Latin IV
	Math Methods I IB	Pre-Calculus
	Music I IB	Music Theory I
Music Theory	Music II IB	Music Theory II
Physics B	Physics I IB	Physics
Physics C: Electricity and Magnetism		AP Physics C: Electricity and Magnetism
Physics C: Mechanics		AP Physics C: Mechanics
	Physics II IB	Physics II
Psychology		Psychology
Spanish Language	Spanish IV IB	Spanish IV
Spanish Literature	Spanish V IB	Spanish V
Statistics		Probability and Statistics
Studio Art: 2-D Design	Art/Design IV IB	Art IV
Studio Art: 3-D Design		AP Studio Art 3-D Design
Studio Art: Drawing	Art Design III IB	Art III
	Theory of Knowledge I IB	Social Studies Elective
	Theory of Knowledge IB	Social Studies Elective
U.S. History	U.S. History IB	U.S. History
World History		World History
	World History IB	Western Civilization

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:3198 (November 2011).

**§2326. Military Service Credit**

A. Two units of elective credit toward high school graduation shall be awarded to any member of the United States Armed Forces, their reserve components, the National Guard, or any honorably discharged veteran who has completed his/her basic training, upon presentation of a military record attesting to such completion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:3199 (November 2011).

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Executive Director

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**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students (LAC 28: CXV.2321)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2321, Carnegie Credit for Middle School Students. This policy revision adds additional courses to the list of courses that middle school students can take for Carnegie credit. This change will allow qualified middle school students to take high school electives in a career area.

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 23. Curriculum and Instruction**

**§2321. Carnegie Credit for Middle School Students**

A. Students in grades five through eight are eligible to receive Carnegie credit for courses in the high school program of studies in mathematics, science, social studies, English, foreign language, keyboarding/keyboarding applications, introduction to business computer applications, computer/technology literacy, health education, Journey to Careers, JAG, Agriscience I, or Family and Consumer Sciences I.

B. - F.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:2031 (October 2008), LR 35:443 (March 2009), LR 35:2319 (November 2009), repromulgated LR

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**RULE**

**Board of Elementary and Secondary Education**

Bulletin 111—The Louisiana School, District, and State Accountability System  
(LAC 28:LXXXIII.409, 613, 3301, 3303, 3501, and 4313)

Editor’s Note: This Notice of Intent is being reprinted in order to correct a submission error. The original Notice of Intent can be viewed on pages 2445-2449 of the August 20, 2011 *Louisiana Register*.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System*: §409. Calculating a 9-12 Assessment Index, §613. Calculating a Graduation Index, §3301. Inclusion of New Schools, §3303. Reconfigured Schools, §3501. Alternative Schools, and §4313. Corrective Actions. Changes in Bulletin 111, Chapter 4, provide detail for dropout adjustment regarding end of course testing, establishing weight for subject-test index scores, and outlines Inclusion of end of test scores earned in middle school. Changes in Bulletin 111, Chapter 6, provide detail for the change in the calculation of the graduation rate adjustment factor to eliminate a negative effect on schools with a graduation rate above the state goal or current grade target. Changes in Bulletin 111, Chapters 33 and 35, provide detail of clarifications for schools that change grade configurations, merge with other schools, or form two schools from one school. Change in routing policy for alternative schools with student population of 25 percent or less full academic year adds an assessment for students in ninth grade who are pursuing GED and state skills certificate. Changes in Bulletin 111, Chapter 43, provide detail to describe entry and exit from district improvement. 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.

**Title 28  
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System  
Chapter 4. Assessment, Attendance, and Dropout Index Calculations**

**§409. Calculating a 9-12 Assessment Index**

A. All operational end-of-course (EOC) tests will be used in the calculation of the assessment index.

1. All subjects will be weighted equally.

2. Algebra I EOC passing test scores earned by students at a middle school will be included in the SPS calculations of the high school to which the student transfers. The scores will be included in the accountability cycle that corresponds with the students’ first year of high school. Middle schools will earn incentive points for EOC passing scores the same year in which the test was administered.

3. Algebra I EOC test scores considered “not passing” will not be transferred to the high school. Students will retake the test at the high school, and the first administration of the test at the high school will be used in the calculation of the assessment index the same year in which it was earned.

B. For all EOC assessments a dropout adjustment factor will not be used in the assessment index.

C. For all GEE assessment data, use the values from the table in §405.A, above.

D. Adjust each subject-test index by the corresponding dropout adjustment factor.

1. The ninth grade dropout adjustment factor is the previous year's ninth grade non-dropout rate plus 4.0 percent (100.0 percent - ninth grade DO rate + 4.0 percent).

2. The tenth grade dropout adjustment factor is the product of the previous year's ninth grade non-dropout rate plus 4.0 percent and the tenth grade non-dropout rate plus 4.0 percent [(100.0 percent - ninth grade DO rate + 4.0 percent) x (100.0 percent - tenth grade DO rate + 4.0 percent)].

3. The eleventh grade dropout adjustment factor is the product of the previous year's ninth grade non-dropout rate plus 4.0 percent and the tenth grade non-dropout rate plus 4.0 percent and the eleventh grade non-dropout rate plus 4.0 percent [(100.0 percent - ninth grade DO rate + 4.0 percent) x (100.0 percent - tenth grade DO rate + 4.0 percent) x (100.0 percent - eleventh grade DO rate + 4.0 percent)].

E. All EOC assessment indices will be equally weighted.

Unit Weights for 9-12 Assessment Index					
Grade	ELA	Math	Science	Social Studies	Total
9th Grade	1.00	1.00			2.00
10th Grade	1.25	1.25			2.5
11th Grade			1.25	1.25	2.5

F. Sum all weighted values from Subsection C of this Section.

G. Divide the sum from Subsection D of this Section by the sum of all weights applied to subject-test index scores from the table above (in Subsection C of this Section). This quotient is the 9-12 Assessment Index.

H. Example of 9-12 Assessment Index Calculation

1. Non-dropout rates in this example are; ninth-95.0 percent, tenth-98.0 percent, and eleventh-99.0 percent.

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
9	ELA	100	.990	99.0	1000	99.0
9	MTH	50	.990	49.5	1000	49.5
10	ELA	100	1.010	101.0	1.25	126.3
10	MTH	150	1.010	151.5	1.25	189.4

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
11	SCI	50	1.040	52.0	1.25	65.0
11	SS	50	1.040	52.0	1.25	65.0
Sums					7	594.2
9-12 Assessment Index				$594.2 \div 7 = 84.9$		

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:3200 (November 2011).

## Chapter 6. Graduation Cohort, Index, and Rate

### §613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

1. Students who do not dropout and do not earn a diploma, a GED, a skills certificate, or a certificate of achievement after four years of high school are defined as attendees.

Student Result	Points
Academic OR Career/Technical Endorsement	180
TOPS Opportunity Award	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

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. For 2011-2013, the cohort graduation rate adjustment factor shall be calculated using the appropriate formula:

a. for schools with graduation rate greater than 80: unadjusted graduation index + [(graduation rate – 80) \* 1.5];

b. for schools with graduation rate greater than or equal to the graduation rate target, but less than 80: no adjustment;

c. for schools with graduation rate less than the graduation rate target: unadjusted graduation index + [(graduation rate – graduation rate target) \* 1.5].

4. For 2014, the cohort graduation rate adjustment factor shall be calculated using one formula for all schools: unadjusted graduation index + [(graduation rate – graduation rate target) \* 1.5].

5. 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. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243 (October 2010), LR 37:3201 (November 2011).

## Chapter 33. New Schools and/or Significantly Reconfigured Schools

### §3301. Inclusion of New Schools

A. - C. ...

D. The new high school in an existing LEA shall enter accountability using its first year of assessment data, adjusted by the district average dropout data.

1. This adjusted assessment index shall be used as a first year baseline SPS to assign letter grades.

2. The baseline in year two shall consist of the adjusted assessment data from year one and assessment data from year two adjusted by the schools own dropout data from year one.

3. The growth SPS in year two shall consist of one year adjusted assessment data.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator (along with two years of adjusted assessment data in year three of the school's operation).

E. New schools in new districts and new charter schools unaffiliated with existing districts shall enter state accountability after their second year of assessment.

1. Elementary schools shall receive their first baseline scores using two years of assessment data and one year of their own attendance and dropout data.

2. High schools shall receive their first baseline scores using two years of assessment data, the first year unadjusted by dropout data, and the second year adjusted by dropout data.

3. High schools shall receive their first growth scores in their third year of operation.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator, along with two years of adjusted assessment data in year three of the school's operation.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010), LR 37:3201 (November 2011).

### §3303. Reconfigured Schools

A. Reconfigured schools are identified as schools that change grade configuration, combine two schools with separate sitecodes into one school with a single sitecode, or divide one school into two separate schools with different sitecodes. Data collected at one site shall not be moved to another site and included in accountability results except

when two or more schools with dissimilar configurations combine to create one school.

B. Prior to any reconfiguration, the LDE will review the changes to school sites in the planned reconfiguration and will consult with the LEA on the effects that the reconfiguration will have on rewards and/or AUS or subgroup component failure status. After this consultation, the LDE shall make all decisions regarding the effects of these changes on rewards, AUS or subgroup component failure status, and sanctions for all schools effected by the changes and will notify the LEA of its decision. Any AUS, SCF, or AA status and eligibility for participating in any specific programs shall be determined by the LDE.

C. All reconfigurations must be submitted to the sponsor site database before October 1 of the first year of operation under the reconfiguration.

D. High schools with a grade 12 that merge with a school without a grade 12 will retain its graduation data from the prior year.

E. When a high school with a grade 12 merges with another school with a grade 12, the graduation cohort outcome data from both schools will be combined together and recalculated.

F. A district with a K-8 school with a greater than 50 percent change in student enrollment, excluding expected grade progression, may request that the school receive a baseline SPS using the first year of assessment data under the new configuration and a district average for attendance and dropout data. No growth score shall be calculated nor growth labels assigned.

G. The LDE will consult with the district concerning the SPS calculation when unusual circumstances or configurations exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 31:2765 (November 2005), LR 33:2600 (December 2007), LR 36:1993 (September 2010), LR 37:3201 (November 2011).

**Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability**

**§3501. Alternative Schools**

A. For the purposes of school accountability, alternative schools are those schools established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom. They house one or more programs designed to address discipline, dropout prevention and recovery, credit recovery, etc. Schools are not considered alternative schools in accountability if created to provide programs for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

B. Alternative Schools will be classified into three categories.

1. Accountable Alternative School. There is sufficient data to calculate a school performance score for all indicators appropriate for school configuration.

2. Non-accountable alternative school:

a. there is insufficient data to calculate a statistically reliable school performance score for the school; or

b. less than 25 percent of the students in the school are enrolled for a full academic year \*(beginning with the 2011-12 fall accountability release).

3. Alternative Program. The school does not have a site code and students who attend the program are enrolled in another school in the district.

a. All assessment data will be routed back to the school in which the student is enrolled.

b. Requests to convert a school to a program must be submitted for approval prior to the opening of a school year.

C. Beginning with the 2010-11 fall accountability release, the school performance scores and letter grades of accountable alternative schools will be published with other schools.

1. Accountable alternative schools will be clearly labeled as alternative schools in public releases.

2. School performance scores for alternative schools will exclude the assessment data for students who are not full academic year (FAY) enrollees. The assessment data for non-FAY students will be routed back to the sending school.

D. Beginning in 2011-12, assessment for alternative schools will include a new assessment for students who do not participate in end-of-course tests (EOCT).

1. A system will be used to assign performance levels and points for each level to be used in alternative school accountability for students in GED and skills certificate programs.

GED/Skills Certificate Options Test	Assessment Points
Basic	150
Approaching Basic	75
Unsatisfactory	0

E. Alternative schools with sufficient data shall also be evaluated in the subgroup component in the same manner as are regular schools.

F. School performance scores and subgroup evaluations for alternative school students shall consist of:

1. the assessment data of all eligible FAY student;
2. the attendance data of all enrollees (K-8 only);
3. the dropout data of all students who have been enrolled for a FAY prior to exiting;

4. graduation data of students who:

a. were enrolled at the alternative school for the FAY in their second year of high school;

b. entered the alternative school after their fourth year of high school and completed at a higher level. The alternative school earns the incentive points.

G. All eligible accountability data that is not included in the school performance score of the alternative school shall be routed to the sending school when the data collection and aggregation processes can produce accurate results except in the following instances.

1. Students transferring from outside the LEA must be enrolled at a non-alternative school for a FAY to be considered a sending school.

2. Accountability data shall not be routed across district lines except as described in Subsection H of this Section.

H. All eligible accountability data from an alternative school with insufficient data to be included in accountability shall be routed to the sending schools.

I. The Louisiana School for Math, Science, and the Arts shall be included in accountability according to its configuration, but its assessment data shall also be routed to the sending schools provided the sending schools have the same assessed grades as the routed data.

J. For routing purposes, a sending school is the school the student last attended.

K. In those cases where a particular grade-level assessment score must be routed from an alternative school to a sending school where the grade does not exist, scores shall be included as follows.

1. *i*LEAP results will be aggregated with the *i*LEAP grade closest in number or 1 grade-level lower.

2. LEAP/GEE results will be aggregated with the LEAP/GEE grade closest in number with consideration for subject area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended 31:423 (February 2005), LR 34:868 (May 2008), LR 35:1472 (August 2009), LR 37:2119 (July 2011), LR 37:3202 (November 2011).

**Chapter 43. District Accountability**

**§4313. Corrective Actions**

A. The Louisiana Department of Education shall report district scores and labels on every school district.

B. The district responsibility index and the associated labels are discontinued. Districts must complete a self-assessment only after failing all three clusters in the same subject.

1. The DOE shall review each self-assessment.

2. The DOE may recommend that BESE schedule a district dialogue with the district.

C. Districts that are identified for improvement by the subgroup component shall write district improvement plans based on the prior years' self-assessments and submit those plans to the LDE within 60 days of identification.

1. A district is identified for district improvement Level 1 when it fails to achieve AYP in all three grade-clusters, in the same subject, in the subgroup component for two consecutive years.

a. For 2004 only, districts that failed subgroup AYP in 2003 and who fail all three grade-clusters in the same subject as they failed in 2003, will be identified for district improvement.

2. The DOE shall review each district improvement plan and within 30 days of receipt of the plan, recommend revisions until the plan is deemed acceptable.

3. The DOE may recommend that BESE schedule a district dialogue with the district.

4. The district shall implement the district improvement plan immediately upon approval by the DOE.

D. Districts in District Improvement Level 1 that fail to achieve AYP in all three grade clusters, in the same subject, in the subgroup component for a third consecutive year or for an additional year within the following two years shall enter District Improvement Level 2 and have a district level external review conducted by the LDE.

E. Districts in District Improvement Level 2 that fail to achieve AYP in all three grade clusters, in the same subject, in the subgroup component for a third consecutive year or for an additional year within the following two years shall

enter District Improvement Level 3 and address the findings of the district level external review immediately upon identification by implementing one of the following:

1. Fully implement a new curriculum that is based on state standards, providing appropriate professional development that offers substantial promise of improving educational achievement (funding requirements listed in NCLB).

2. Remove particular schools from the jurisdiction of the local educational agency and establish arrangements for public governance and supervision of such schools as provided in R.S. 17:1990 and Chapter 24, Recovery School District.

3. Authorize students to transfer to a higher-performing public school operated by another local educational agency after reaching an agreement with the other LEA.

F. Districts shall exit district improvement if they pass subgroup AYP in the same subject for which they entered district improvement in the same cluster for two consecutive years. An example is in the following table.

Examples of Districts That Entered District Improvement (DI) in 2004 Due to Math Results							
	2005			2006			Results
	K-5	6-8	9-12	K-5	6-8	9-12	
Cluster Performance	Pass	Fail	Fail	Fail	Pass	Pass	Remain in DI
	Pass	Pass	Pass	Fail	Fail	Fail	Advance to DI Level 2
	Pass	Fail	Fail	Pass	Fail	Fail	Exit DI
	Fail	Pass	Pass	Fail	Fail	Pass	Exit DI

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 31:424 (February 2005), LR 31:635 (March 2005), LR 31:1256 (July 2005), LR 33:1334 (July 2007), LR 33:1612 (August 2007), LR 33:2032 (October 2007), LR 34:429 (March 2008), LR 37:2120 (July 2011), LR 37:3203 (November 2011).

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**RULE**

**Board of Elementary and Secondary Education**

Bulletin 119—Louisiana School Transportation Specifications and Procedures (LAC 28: CXIII.907 and 2509)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 119, Louisiana School Transportation Specifications and Procedures: §907. Intersections, Turns, Driving Speeds, and Interstate Driving; and §2509. Used School Buses.* The revision to Chapter 9, Section 907, implements a board policy that requires the maximum speed of 35 miles per hour for school buses under conditions that require frequent stops to receive and

discharge students when the posted speed is 35 miles per hour or greater. In addition, the revision to Chapter 25, Section 2509, establishes uniform requirements relative to the purchase of used school buses for all school bus owners/operators and school districts. The revision to the policy will allow both tenured and non-tenured school bus owners/operators to purchase used school buses 10 or less model years old.

**Title 28  
EDUCATION**

**Part CXIII. Bulletin 119—Louisiana School  
Transportation Specifications and Procedures  
Chapter 9. Vehicle Operation  
§907. Intersections, Turns, Driving Speeds, and  
Interstate Driving**

A. - C.1. ...

2. The maximum speed for school buses shall be 35 miles per hour under conditions that require frequent stops to receive and discharge students when the posted speed is 35 miles per hour or greater.

D. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, and R.S. 32:62.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:835 (May 1999), amended LR 25:2169 (November 1999), LR 36:1472 (July 2010), LR 37:3204 (November 2011).

**Chapter 25. Purchase, Sale, Lease, and Repair of  
School Buses**

**§2509. Used School Buses**

A. ...

B. All replacement school buses, at the time they are acquired by the owner, must be 10 or less model years old for all owners/operators and school districts. The number of years shall be reckoned from the date of the model year (see *Calculating the Age of School Buses*, §3107).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999), amended LR 26:639 (April 2000), LR 27:187 (February 2001), LR 36:1479 (July 2010), LR 37:3204 (November 2011).

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**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741 (Nonpublic)—Louisiana Handbook for  
Nonpublic School Administrators—Distance Learning  
(LAC 28:LXXIX.2523)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2523, Distance Learning. This policy revision aligns the policy for nonpublic schools with the recently revised policy for public schools. These changes are required to update the policy with the newest changes in and requirements for online and

distance learning. The revisions were recommended by a committee of educators specializing in online learning.

**Title 28  
EDUCATION**

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana  
Handbook for Nonpublic School Administrators—  
Programs of Study**

**Chapter 25. Career/Technical Education Course  
Offerings**

**§2523. Distance Learning**

A. A school choosing to implement a distance education program shall establish policy and procedures for reviewing and approving programs that meet the following standards for distance education as established by BESE.

1. Distance education shall comply with all BESE policies related to nonpublic schools.

2. The school shall meet the following requirements related to the development of a standards-based distance education program. A *receiving* school is defined as any school that has students enrolled in courses via distance education. A *provider* could be an LEA, school, agency or educational organization.

a. The receiving school shall authorize each distance education course and ensure that the rigor and breadth meets appropriate course content requirements.

b. The receiving school shall ensure that instruction is provided by teachers certified or qualified in the course/subject in which they are teaching with training in the delivery method, including appropriate media and pedagogy.

c. The receiving school shall verify that college and university advanced placement and/or college dual enrollment course instructional staff not holding Louisiana state teacher credentials are validated as subject matter experts by the providing institution.

d. The receiving school shall ensure that all students enrolled in a distance learning course are provided with the necessary course materials and technical support.

e. The receiving school shall evaluate the effectiveness of each authorized distance education course based on course completion rates and student achievement.

f. The provider shall define minimum prerequisite technology competencies for student participation in distance education courses if such competencies are required for course access.

g. The provider shall also make available to the student an orientation to the course delivery method prior to or at the start of the course.

h. The provider shall ensure that teachers delivering instruction in distance education courses use a variety of methods to assess the mastery of the content as reflected in the *Louisiana Content Standards*.

i. The provider shall provide to the receiving school a complete syllabus and a list of required materials prior to course implementation.

j. The provider shall ensure that all course content complies with copyright fair use laws, including The Technology, Education, and Copyright Harmonization Act (TEACH Act).

k. Online Course providers shall ensure access to the courses' web content by using non-proprietary technologies (html).



1. Schools and course providers shall make courses available to all students by complying with web accessibility guidelines and standards (W3C, section 508, and Louisiana and institutional guidelines) to the maximum extent reasonably possible.

m. The provider shall supply course content that is designed to meet the following criteria:

i. based on current perspectives of learning theories and curriculum standards;

ii. systematic in design, clearly written and revised based on student performance and feedback;

iii. uses appropriate presentation methods, media and pedagogy;

iv. engages students in a variety of learning activities based on various learning styles;

v. accommodates individual differences, including student disabilities; and

vi. encourages student-to-teacher and student-to-student interaction.

### 3. Management and Administration

a. The receiving school shall award credit and grades for distanced education courses assigned by the distance education provider and instructor with no deviations.

b. The receiving school shall ensure that a facilitator who is a Louisiana licensed or qualified teacher is assigned to and is actively engaged with each student participating in distance education courses.

c. The receiving school shall ensure that the facilitator adheres to guidelines determined by the provider and the policies in this Section.

d. The receiving school shall provide adequate, timely, and appropriate technical support to students, teachers, and facilitators.

e. The receiving school shall ensure that the facilitators are provided ongoing staff development appropriate to the delivery method used, supporting distance education courses technically and instructionally.

f. The receiving school shall ensure that students have appropriate, equitable, and adequate access for course participation.

g. In the event of short- and long-term interruptions, the school shall establish an alternative method of instruction in cooperation with the provider.

h. The provider shall judiciously address issues relative to course load and student-teacher ratio as appropriate for the particular method of delivery, course content, and teacher competency to ensure effective student interaction and course management.

i. Students will be enrolled, added, and dropped as outlined in the school policies.

j. The provider shall ensure that the teacher providing instruction is provided adequate technical support to ensure ease of use for faculty and students.

k. The provider shall furnish training and/or support in designing course content to fit the delivery methods proposed for distance education courses.

l. The teacher delivering instruction and the facilitator, through ongoing communication, shall be responsible for verifying student participation and performance.

m. The teacher delivering instruction shall provide alternate course procedures and activities for use in case of technical and other course delivery problems arise that prevent normal course delivery.

n. The teacher delivering instruction shall an atmosphere conducive to optimal learning, including but not limited to monitoring online discussions and other instructional activities.

o. The teacher delivering instruction shall practice ethical and legal use of equipment and instructional resources.

p. The facilitator shall practice ethical and legal use of equipment and instructional resources.

q. The teacher delivering instruction and the facilitator through ongoing communication shall be responsible for verifying student participation and performance.

r. The facilitator shall implement alternate course procedures when technical and other course delivery problems prevent normal course delivery.

s. The facilitator shall maintain an atmosphere conducive to optimal learning including but not limited to monitoring online discussions and other instructional activities as they occur in the classroom as directed by the teacher delivering instruction.

### 4. Specifications

a. The receiving school shall provide students enrolled in distance education courses technical access which meets specifications furnished by the course provider.

b. The receiving school shall provide instructional and communication hardware which meets specifications furnished by the course provider.

c. The receiving school shall fund and provide timely and appropriate technical support.

d. The provider will furnish course technical requirements sufficiently in advance so districts may make informed decisions about participation.

e. Course providers will ensure they have the appropriate technical infrastructure to support their course offerings for effective course delivery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:3092 (December 2005), amended LR 37:3204 (November 2011).

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### RULE

#### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Red Tape Reduction Waiver and Local Empowerment Program (LAC 28: CXV.344)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §344. Red Tape

Reduction Waiver and Local Empowerment Program. The addition of Section 344 provides for BESE to waive state policy and law as requested by districts who feel such laws and policies inhibit their ability to significantly improve teacher effectiveness and student academic achievement. Districts can request relief from any policy by demonstrating that alternative procedures and rules they will adopt to meet targets for increased teacher effectiveness and student achievement will be successful. A district's ability to maintain the waiver depends on whether it meets such performance targets. This revision was required by Act 749 of the 2010 Regular Legislative Session.

## **Title 28**

### **EDUCATION**

#### **Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

#### **Chapter 3. Operation and Administration**

#### **§344. Red Tape Reduction Waiver and Local Empowerment Program**

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

###### **1. Purpose**

a. The purpose of this policy is to provide schools and school districts with the ability to seek waivers from rules and regulations that may hinder academic progress and replace those policies with protocols designed to improve teaching effectiveness and student academic achievement.

###### **2. Waivers**

a. A waiver allows a public school to be exempt from one or more provisions of Title 17 of the Louisiana Revised Statutes of 1950, or any rules, regulations or policies of the Louisiana Board of Elementary and Secondary Education (BESE) that are applicable to public schools, school officers or school employees. A waiver may be granted to exempt a school from laws, rules, and/or policies that affect such activities as, but are not limited to, instructional time, curriculum, funding, personnel, student-to-personnel ratios, and student support.

b. Waivers from the following shall not be granted pursuant to this Chapter:

i. provisions governing school nutrition programs (R.S. 17:191 et seq.);

ii. providing free transportation to any student attending a public school (R.S. 17:158);

iii. providing alternative educational programs for any student suspended or expelled from school (R.S. 17:416.2);

iv. evaluation of teachers or administrators pursuant to R.S. 17:3902;

v. the exemptions authorized for Charter Schools pursuant to R.S. 17:3996; or

vi. any limitations or restrictions on outsourcing food, clerical, custodial or paraprofessional services.

##### **B. Request for Waivers**

###### **1. Governing Authority**

a. For purposes of this Chapter, "governing authority" means the governing authority of any public elementary or secondary school, including any local or parish school board or a charter school board.

b. The governing authority may request a waiver from any statute, rule, regulation or BESE policy, as permitted by law, for any school, or any combination of schools, or all schools under its jurisdiction provided that the

such waiver shall be designed to improve the quality of instruction and student academic achievement.

##### **C. Waiver Procedure**

1. The governing authority shall submit a written request for a waiver to BESE. The governing authority may use a waiver request form designed by the department. Alternatively, a written request from the governing authority shall be considered valid provided it contains all the requisite information. The waiver request shall contain the following information:

a. identification of the specific laws, rules, regulations and/or policies from which a waiver is being sought;

b. identification of the school or schools for which the waiver will cover;

c. description of the policies and procedures that will be instituted as a substitute for the waived provisions;

d. description of how the proposed waiver will:

i. increase the quality of instruction for students;

ii. improve the academic achievement of students;

and

iii. improve teaching effectiveness within the school for which the waiver is sought;

e. description of the specific, measurable educational goals, growth targets, performance targets and the methods to be used to measure progress in meeting the goals for each year. The educational goals should be, at a minimum, measured using state-administered, standardized assessment data. For purposes of this Chapter, "growth targets" shall mean the number of school performance score (SPS) points, as established by the statewide school and district accountability system, required and determined annually for the school to make sufficient progress toward the statewide school performance goal:

i. all schools receiving a waiver must meet their growth targets annually. Failure to meet its growth target may result in a termination of the waiver upon review by BESE;

ii. a school is deemed to have met its growth target if the school achieves its yearly growth target for each year for which the school received a waiver (e.g., if a school receives a waiver for four years, that school is deemed to have met its growth targets if it meets its yearly growth target in each year of the four year waiver period);

2. the governing authority shall certify that a majority of classroom teachers employed at the school or schools affected by the waiver voted in favor of the requested waiver.

##### **D. Teacher Voting Procedure**

1. A majority of the classroom teachers employed in the school or schools seeking the waiver must vote in favor of the proposed waiver request.

2. Voting by the classroom teachers shall be by secret ballot and shall be conducted as follows.

a. Teachers shall be given no less than five business days notice of the waiver request prior to the date of the vote. Notice shall include a copy of the waiver request and the date(s) of the vote. Notice shall be considered sufficient when it is distributed in a manner reasonably designed to provide each teacher a copy of the proposed waiver. Acceptable means of notice include, but are not limited to, placing a copy of such notice in each teacher's mail box, by

posting it on the wall of a common area such as a teacher's resource room or in the school office, or sending the notice via email.

b. Voting may be conducted through on-line voting, provided that such on-line voting takes place only on the designated date(s) for said vote.

c. The vote shall be tallied by the school principal or his designee and a teacher representative employed at the school seeking the waiver. A majority of votes shall determine the outcome of the waiver request.

3. The Department of Education may provide an optional sample ballot that may be used in the voting process.

#### E. Low-Performing Schools

1. For purposes of this Chapter, a low-performing school shall be a school that is defined as in academically unacceptable school (AUS) status as determined by BESE.

2. A low-performing school may be granted a waiver provided it meets the terms and conditions, as determined by BESE that are aimed at improving:

a. teacher effectiveness pursuant to R.S. 17:3881 et seq.;

b. the quality of instruction; and

c. student academic achievement.

3. The governing authority of a low-performing school that is granted a waiver shall:

a. ensure the improvement of the school's teachers in accordance with R.S. 17:3881 et seq.;

b. ensure the improvement of quality of instruction and student achievement by implementing one of the following intervention options:

i. turnaround: put in place new leadership and a majority of new staff, new governance, and improved instructional programs, and provide the school with sufficient operational flexibility such as the ability to select staff, control its budget as approved by the school's governing authority, and increase learning time;

ii. restart: convert the school to a charter school. However, every teacher employed in such school prior to its conversation to a charter school, who has been determined to be effective in accordance with the provisions of Part II of Chapter 39 of Title 17 of the Louisiana Revised Statutes of 1950, shall be given the option to remain at the school or to be reassigned by the governing authority to another school under its jurisdiction;

iii. school closure: close the school and place its students in a high-performing school within the district;

iv. transformation: hire new school leadership and implement a suite of best practices including comprehensive instructional management reform and measures of effective teaching. A waiver shall not be granted to a district that proposes to utilize this option for more than 50 percent of its low-performing schools covered by the waiver;

c. a district that has implemented one or more of the interventions described above for its low-performing schools in the two academic years immediately preceding the waiver application is not eligible to receive a waiver unless both of the following apply:

i. the school has met its statewide accountability growth target or surpassed the statewide growth average, calculated by examining whether the school's growth exceeded the average statewide growth for that year, for each year during such period of implementation; and

ii. the district agrees to implement any remaining conditions of school intervention by the beginning of the following school year;

d. a school implementing any of the intervention options described in Subparagraph 3.b, above, shall not be subject to transfer to the recovery school district for the duration of the waiver period;

e. upon expiration of the waiver, a school's status shall be determined by identifying the school's previous AUS status and identifying whether the school's current school performance score (SPS) surpasses the AUS bar as determined by BESE. If the school's score is not above AUS, the school shall advance one year in AUS (e.g., if a school enters into a waiver as an AUS 2 school and upon expiration of the waiver the school does not earn a SPS above AUS status, then the school shall be labeled as AUS 3);

f. in the event the school has neither met its growth targets, as described in Subparagraph C.1.e above, nor surpassed an acceptable level of academic performance as determined by BESE, and BESE terminates its waiver in accordance with Subsection G below, the school shall be either:

i. governed under a memorandum of understanding (MOU) between the governing authority of the school and the RSD, which shall govern the operation of the school; or

ii. based on the recommendation of the state superintendent, transferred directly to the jurisdiction of the recovery school district;

g. a school that entered into an MOU with the RSD prior to the receipt of a waiver, and which upon the expiration of the MOU or termination of the waiver, has not met its growth targets, shall be transferred to the jurisdiction of the RSD.

#### 4. RSD Accountability

a. A school that has been under the jurisdiction of the RSD that has not met its growth targets at the expiration of the waiver period shall:

i. if the school is a direct-run RSD school, be converted to a charter school; or

ii. if the school is a charter school, the RSD will recommend to BESE that the charter school's charter authority be terminated. The RSD may enter into a contract with another chartering organization for the operation of the school; or

iii. the school shall be closed and its students will be transferred to a higher-performing school within the jurisdiction of the RSD.

#### F. Grant, Denial or Extension of Waiver

1. Only BESE has the authority to grant waivers. A waiver may be approved as requested or may be subject to modifications as determined by BESE. The department shall make a recommendation to BESE on each waiver request,

and such recommendation shall identify any special modifications that may be required. A waiver shall be effective for a period of up to four years unless terminated earlier upon a determination by BESE. A school may seek termination of a waiver upon application to BESE; however, in the case of a low-performing school, nothing shall preclude BESE from taking any action permitted by law to impose conditions upon said school to ensure that performance expectations are met.

2. Upon approval by BESE, the terms and conditions shall be in writing and shall be signed by the superintendent and the governing authority. BESE will authorize an electronic signature of the waiver agreement.

3. Upon a request by the governing authority, and a recommendation by the department, BESE may extend the waiver period upon a determination that the waiver has been effective in enabling the school to carry out the activities for which the waiver was granted and upon a demonstration that the waiver has contributed to the improved quality of instruction and student academic achievement.

4. A waiver extension shall not prevent a school otherwise eligible from being subject to transfer to the recovery school district.

#### G. Termination of Waivers

1. If BESE determines that the performance of the school has been insufficient to justify a continuation of a waiver, or if the waiver is no longer necessary to achieve its original intent, BESE may terminate a waiver, either in full or with respect to individual schools.

2. BESE shall terminate a waiver granted to a low-performing school if the school fails to implement the requirements of R.S. 17:4044 within two school years from the issuance of the waiver.

3. BESE may terminate a waiver granted to a low-performing school if the school has not met its statewide accountability growth targets within two years of the granting of the waiver or has not met other requirements or benchmarks.

#### H. Reporting Requirements

1. The governing authority of a school that receives a waiver shall provide reports on an annual basis to BESE which shall provide information on the effectiveness of the waiver or waivers granted. Such annual report shall be submitted to the Department of Education, Superintendent's Office, no later than December 1 of each year and shall include, but not be limited to, a description of whether or not policies implemented to replace the procedures waived are:

- a. increasing the quality of instruction to students;
- b. improving the academic achievement of the students; and
- c. improving teacher effectiveness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:4031-4039.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:3206 (November 2011).

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## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for  
State Certification of School Personnel  
(LAC 28:CXXXI.233, 235, 237, 241, 243, 605, and 625)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements), §235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements), §237. Certification-Only Program Alternative Path to Certification, §241. PRAXIS I Scores, §243. ACT/SAT Scores in Lieu of PRAXIS I Scores, §605. Requirements to add Early Childhood (Grades PK-3), and §625. Requirements to add Early Interventionist Birth to Five Years. This revision of the Praxis examination policy would allow the replacement of the current Praxis exams in Art, Social Studies, Technology Education, and the Principles of Learning and Teaching exams with new editions of the following Praxis exams: Art: Content Knowledge (0134), Social Studies: Content and Interpretation (0086), Technology Education (0051), Principles of Learning and Teaching: Early Childhood (0621), Principles of Learning and Teaching: K-6 (0622), Principles of Learning and Teaching: 5-9 (0623), and Principles of Learning and Teaching: 7-12 (0624) effective January 1, 2012. The current Praxis exams required for Louisiana licensure in art, social studies, technology education and the Principles of Learning and Teaching exams are being phased out by Educational Testing Service.

#### Title 28

#### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 2. Louisiana Teacher Preparation Programs Subchapter B. Alternate Teacher Preparation Programs §233. The Practitioner Teacher Program Alternative Path to Certification (Minimum Requirements)

##### A. - H. ...

I. Program requirements must be met within a three year time period. For certification purposes, private providers and colleges or universities will submit signed statements to the Department of Education indicating that the student completing the Practitioner Teacher Program alternative certification path met the following requirements:

1. passed the PPST components of the Praxis

NOTE: This test was required for admission.

2. completed all program requirements including the internship with a 2.50 or higher GPA (this applies to candidates in a university program);
3. completed prescriptive plans (if weaknesses were demonstrated);
4. passed the Praxis specialty examination for the area(s) of certification;

NOTE: This test was required for admission.

a. grades PK-3—Elementary Education: Content Knowledge (#0014);

b. grades 1-5 (regular and special education)—Elementary Education: Content Knowledge (#0014);

c. grades 4-8 (regular and special education)—middle school subject-specific licensing examination(s) for the content area(s) to be certified;

d. grades 6-12 (regular and special education)—secondary subject-specific examination(s) for the content area(s) to be certified. General-special education mild/moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

e. all-level K-12 areas (art, dance, foreign language, health and physical education, and music)—Subject-specific examination(s) for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

5. passed the pedagogy examination (Praxis):

a. grades PK-3—Principles of Learning and Teaching Early Childhood (#0621);

b. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

c. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

d. grades 6-12—Principles of Learning and Teaching 7-12 (#0624);

e. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

f. general-special education mild/moderate—Special Education: Core Knowledge and Mild to Moderate Applications (#0543); in addition to one of the following aligned to candidates grade level:

i. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

ii. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

iii. grades 6-12—Principles of Learning and Teaching 6-12 (#0624);

I.6. - L. ...

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 32:1790 (October 2006), amended LR 34:1387 (July 2008), LR 35:1477 (August 2009), LR 36:2261 (October 2010), LR 36:2263 (October 2010), LR 37:549 (February 2011), LR 37:558 (February 2011), LR 37:3208 (November 2011).

### **§235. The Master's Degree Program Alternative Path to Certification (Minimum Requirements)**

A. - D.5.a. ...

E. Certification Requirements. Colleges/universities will submit signed statements to the Louisiana Department of Education indicating that the student completing the Master's

Degree Program alternative certification path met the following requirements:

1. passed PPST components of Praxis (as required for admission);

2. completed all coursework in the master's degree alternate certification program with a 2.50 or higher grade point average (GPA);

3. passed the specialty examination (Praxis) for the area of certification (this test was required for admission):

a. grades PK-3 (regular education)—Elementary Education: Content Knowledge (#0014);

b. grades 1-5 (regular education and mild/moderate)—Elementary Education: Content Knowledge (#0014);

c. grades 4-8 (regular education and mild/moderate)—middle school subject-specific licensing examination for content area to be certified;

d. grades 6-12 (regular education and mild/moderate)—Secondary subject-specific examination for content area(s) to be certified. General-special education mild/moderate candidates must pass a Praxis core subject area exam (English/language arts, foreign language, mathematics, the sciences, or social studies). If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

e. all-level K-12 certification—Subject-specific examination for content area(s) to be certified. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area for admission to the program;

f. Special Education Early Interventionist (Birth to Five Years), Significant Disabilities 1-12, Hearing Impaired K-12, and Visual Impairments/Blind K-12—Elementary Education: Content Knowledge (#0014) specialty examination;

4. passed the pedagogy examination (Praxis):

a. grades PK-3—Principles of Learning and Teaching Early Childhood (#0621);

b. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

c. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

d. grades 6-12—Principles of Learning and Teaching 7-12 (#0624);

e. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

f. General-Special Education Mild/Moderate—Special Education: Core Knowledge and Mild to Moderate Applications (#0543); in addition to one of the following aligned to candidates grade level:

i. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

ii. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

iii. grades 6-12—Principles of Learning and Teaching 6-12 (#0624);

g. Special Education Early Interventionist Birth to Five Years—Special Education: Core Knowledge and

Applications (#0354) and Principles of Learning and Teaching: Early Childhood (#0621);

h. Special Education Significant Disabilities 1-12—Special Education: Core Knowledge and Severe to Profound Applications (#0545);

i. Special Education Hearing Impaired K-12—Special Education: Core Knowledge and Applications (#0354) and Education of Exceptional Students: Hearing Impairment (#0271);

j. Special Education Visual Impairments/Blind K-12—Special Education: Core Knowledge and Applications (#0354);

5. prior to receiving a Level 1 or higher professional teaching certificate, a candidate who entered an alternate certification program after May 1, 2004, is required to demonstrate proficiency in the reading competencies as adopted by the BESE through either of the following:

a. successfully complete the same number of semester hours in reading as required for undergraduate teacher preparation programs:

i. early childhood PK-3 or elementary 1-5 programs—9 hours;

ii. middle grades 4-8 programs—6 hours;

iii. secondary 6-12 or All-Level K-12 programs—3 hours;

iv. special education areas (early interventionist, hearing impaired, significant disabilities, or visually impaired)—9 hours; or

b. passes a reading competency assessment.

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 32:1792 (October 2006), amended LR 35:1480 (August 2009), LR 36:2262 (October 2010), LR 36:2263 (October 2010), LR 37:549 (February 2011), LR 37:3209 (November 2011).

**§237. Certification-Only Program Alternative Path to Certification**

A. - D.7. ...

E. Licensure Requirements

1. Practitioner License (PL2)—a program candidate that is hired as a full-time teacher in an approved Louisiana school will be issued a Practitioner License 2. This license is issued at the request of the Louisiana employing school system for a specific grade level and content area once successful completion of the classroom readiness component has been verified. The teacher is restricted to the specific grade level and content area as designated on the Practitioner License 2.

2. Standard Professional License—a standard Level certificate may be issued after the applicant has:

a. completed all program requirements with a 2.50 or higher GPA (this applies to candidates in a university program); and

b. passed the pedagogy examination (Praxis):

i. grades PK-3—Principles of Learning and Teaching Early Childhood (#0621);

ii. grades 1-5—Principles of Learning and Teaching K-6 (#0622);

iii. grades 4-8—Principles of Learning and Teaching 5-9 (#0623);

iv. grades 6-12—Principles of Learning and Teaching 7-12 (#0624);

v. all-level K-12 certification—Principles of Learning and Teaching K-6, 5-9, or 7-12;

vi. Special Education Early Interventionist Birth to Five Years—Special Education: Core Knowledge and Applications (#0354) and Principles of Learning and Teaching Early Childhood (#0621);

vii. Special Education Significant Disabilities 1-12—Special Education: Core Knowledge and Severe to Profound Applications (#0545);

viii. Special Education Hearing Impaired K-12—Special Education: Core Knowledge and Applications (#0354) and Education of Exceptional Students: Hearing Impairment (#0271);

ix. Special Education Visual Impairments/Blind K-12—Special Education: Core Knowledge and Applications (#0354);

c. completed all requirements of the certification-only alternative certification path as verified to the Louisiana Department of Education by the program provider.

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 32:1794 (October 2006), amended LR 35:1482 (August 2009), LR 36:2262 (October 2010), LR 36:2263 (October 2010), LR 37:550 (February 2011), LR 37:3210 (November 2011).

**§241. PRAXIS I Scores**

Repealed.

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 32:1836 (October 2006), amended LR 33:2355 (November 2007), LR 35:644 (April 2009), LR 36:484 and 487 (March 2010), LR 36:2264 (October 2010), repealed LR 37:3210 (November 2011).

**Subchapter C. Louisiana Testing Requirements**

**§243. PRAXIS Exams and Scores**

A. A teacher applicant for certification must successfully complete the appropriate written or computer delivered tests<sup>1</sup> identified prior to Louisiana teacher certification.

1. Pre-Professional Skills Tests<sup>2</sup>. Teacher applicants in all content areas must pass all three Praxis I Pre-Professional Skills tests.

Pre-Professional Skills Test "Paper Administrations"	Test #	Score	Effective Date
PPST:R – Pre-Professional  Skills Test: Reading	0710	172	Effective  1/16/02
	0720	171	
	0730	170	
PPST:W – Pre-Professional  Skills Test: Writing	0710	174	Effective 7/1/07
	0720	173	
	0730	172	
PPST:W – Pre-Professional  Skills Test: Writing	0710	176	Effective 7/1/10
	0720	175	
	0730		

Pre-Professional Skills Test "Paper Administrations"	Test #	Score	Effective Date
PPST:M – Pre-Professional Skills Test: Mathematics			

Pre-Professional Skills Test "Computer Based Administrations"	Test #	Score	Effective Date
PPST:R – Pre-Professional Skills Test: Reading	0711 0721	319 316	Prior to 1/16/02
PPST:W – Pre-Professional Skills Test: Writing	0731	315	
PPST:M – Pre-Professional Skills Test: Mathematics			
PPST:R – Pre-Professional Skills Test: Reading	5710 5720 5730	172 171 170	Effective 1/16/02
PPST:W – Pre-Professional Skills Test: Writing	5710 5720 5730	174 173 172	Effective 7/1/07
PPST:M – Pre-Professional Skills Test: Mathematics	5710 5720 5730	176 175 175	Effective 7/1/10

## 2. Core Battery Exams<sup>3</sup>

Communications Skills (CS)	0500	645	Prior to 9/1/99
General Knowledge (GK)	0510	644	
Professional Knowledge (PK)	0520	645	

<sup>1</sup>To differentiate the computer delivered tests, Educational Testing Service has placed the number "5" preceding the current test code. The department will accept computer delivered passing test scores for licensure.

<sup>2</sup>Note: Effective September 1, 2006: An ACT composite score of 22 or a SAT combined verbal and math score of 1030 may be used in lieu of Praxis 1 PPST Exams by prospective teachers in Louisiana.

<sup>3</sup>After 9/1/99 PPST Reading and Writing replaced CS; PPST Math replaced GK; and PLTs replaced PK.

## 3. Principles of Learning and Teaching (PLT) Exams

Principles of Learning and Teaching :	0521	172	
Early Childhood	0522	161	Prior
Principles of Learning and Teaching: K-6	0523 0524	154 161	to
Principles of Learning and Teaching: 5-9 Principles of Learning and Teaching: 7-12			1/1/12

B. Content and Pedagogy Requirements

Certification Area	Name of Praxis Test	Content Exam Score	Pedagogy: Principles of Learning & Teaching		
			PLT K-6 (#0622)	PLT 5-9 (#0623)	PLT 7-12 (#0624)
Early Childhood PK-3	Elementary Content Knowledge (0014)	147	Prior to 6/1/04: PLT K-6 or ECE 0020; After 5/31/04: Early Childhood Education 0020 (Score 510); After 12/31/07 PLT : Early Childhood 0521 (Score 172); After 12/31/11 PLT: Early Childhood 0621 (Score 157)		
	Prior to 5/31/04	150			
	Effective 6/1/04	150			
Grades 1-5	Elementary Content Knowledge (0014)	147	160	---	---
	Prior to 5/31/04	150			
	Effective 6/1/04	150			
Grades 4-8 Mathematics	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150			
	Middle School Mathematics (0069)	148	---	160	---
Grades 4-8 Science	Middle School Science (0439)	140	---		
	Prior to 5/31/2006	145			
	Effective 6/1/2006	150			
Grades 4-8 Social Studies	Middle School Social Studies (0089)	149			
	Middle School English/Language Arts (0049)	160	---	160	---

C. Certification Areas

1. Grades 6-12 Certification

Grades 6-12 Certification Areas						
			Score			PLT 7-12
Agriculture	Agriculture (0700)	Effective 7/1/05	510	---	---	157
Biology	Biology and General Science (0030)	Prior to 6/30/05	580	---	---	157
	Biology: Content Knowledge (0235)	Effective 7/1/05	150			
Business	Business Education (0100)	Prior to 5/31/04	540	---	---	157
		Effective 6/1/04	570			
	Business Education: Content Knowledge (0101)	Effective 9/18/10	154			
Chemistry	Chemistry/Physics/General Science (0070)	Prior to 6/30/06	530			157
	Chemistry: Content Knowledge (0245)	Effective 7/1/06	151			
English	English Language, Literature, and Composition: Content Knowledge (0041)		160			
	Pedagogy (0043)		130	---	---	157
Family & Consumer Sciences (formerly Home Economics)	Family and Consumer Sciences (0120)	Prior to 12/31/08	510	---	---	157
	Family and Consumer Sciences (0121)	Effective 1/1/09	141			
French	French (0170)	Prior to 5/31/04	520	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)		
	French: Content Knowledge (0173)	Effective 6/1/04	156			
	French: World Language (5174)	Effective 10/15/10	157			
General Science	Biology and General Science (0030) –OR–		580	---	---	157
	Chemistry/Physics/General Science (0070) Prior to 6/30/05		530			
	General Science: Content Knowledge (0435)	Effective 7/1/05	156			
German	German (0180)		500	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)		
	German: Content Knowledge (0181)	Effective 7/1/06	151			
	German: World Language (5183)	Effective 10/15/10	157			



Grades 6-12 Certification Areas						
			Score			PLT 7-12
Mathematics	Mathematics (0060)	Prior to 5/31/04	550	---	---	157
	Mathematics: Content Knowledge (0061)	Effective 6/1/04	125			
		Effective 6/1/07	130			
		Effective 6/1/10	135			
Physics	Chemistry/Physics/General Science (0070)	Prior to 6/30/06	530			157
	Physics: Content Knowledge (0265)	Effective 7/1/06	141			
School Librarian	Library Media Specialist (0310)	Prior to 9/11/09	560	---	---	---
	Library Media Specialist (0311)	Effective 9/12/09	136			
Social Studies	Social Studies: Content Knowledge (0081)		149	---	---	157
	Interpretation of Materials (0083)		152			
	Social Studies: Content and Interpretation (0086)	Effective 1/1/12	160			
Spanish	Spanish (0190)	Prior to 5/31/04	540	PLT7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)		
	Spanish: Content Knowledge (0191)	Effective 6/1/04	160			
	Spanish: World Language (5195)	Effective 10/15/10	157			
Speech	Speech Communications (0220)	Effective 7/1/05	575	---	---	157
	Speech Communications (0221)	Effective 9/12/09	146			
Technology Education (formerly Industrial Arts)	Technology Education (0050)	Effective 7/1/05	600	---	---	157
	Technology Education (0051)	Effective 1/1/12	159			
Computer Science Earth Science Environmental Science Journalism Latin Marketing (formerly Distributive Education)	At this time, a content area exam is not required for certification in Louisiana.		---	---	---	157

## 2. All-Level K-12 Certification

All-Level K-12 Certification Areas								
			Score	PLT K-6		PLT 5-9		PLT 7-12
Grades K-12 Art	Art: Content Knowledge (0133)	Effective 7/1/05	155	160	or	160	or	157
	Art: Content Knowledge (0134)	Effective 1/1/12	159					
Grades K-12 Dance	None Available**		---	160	or	160	or	157
Grades K-12 Foreign Languages	French (0170)	Prior to 5/31/04	520	PLT K-6 (Score 160) or PLT 5-9 (Score 160) or PL7-12 (Score 157) until 6/30/13; After 6/30/13 World Languages Pedagogy 0841 (Score 158)				
	French: Content Knowledge (0173)	Effective 6/1/04	156					
	French: World Languages (5174)	Effective 10/15/10	157					
	German (0180)		500					
	German: Content Knowledge (0181)		151					
	German: World Language (5183)	Effective 10/15/10	157					
Grades K-12 Music	Music Education (0110)	Prior to 5/31/04	530	160	or	160	or	157
	Music: Content Knowledge (0113)	Effective 6/1/04	151					
	Physical Education (0090)	Prior to 5/31/04	550					
Grades K-12 Health and Physical Education	Phys. Education: Content Knowledge (0091)		146	160	or	160	or	157

\*\*At this time, a content area exam is not required for certification in Louisiana.

D. Special Education Areas

Area	Content Exam	Score	Pedagogy Requirement	Score
All Special Education Area(s)			Prior to 6/1/04: PLT K-6 (161), PLT 5-9 (154) OR PLT 7-12 (161)	
Early Interventionist	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) Effective 6/1/04 Educ. of Exceptional Students: Core Content Knowledge (0353) and Early Childhood Education (0020) Effective 7/1/05	143 143 510
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Educ. of Exceptional Students: Core Content Knowledge (0353) and Principles of Learning and Teaching: Early Childhood (0521) Effective 1/1/08 Special Education: Core Knowledge and Applications (0354) and Principles of Learning and Teaching: Early Childhood (0521) Effective 1/1/11 Special Education Core Knowledge and Applications (0354) and Principles of Learning and Teaching: Early Childhood (0621) Effective 1/1/12	143 172 145 172 145 157
Hearing Impaired	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) and Educ. of Deaf and Hard of Hearing Students (0271) Effective 6/1/04	143 160
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Special Education: Core Knowledge and Application (0354) and Education of Deaf and Hard of Hearing Students (0271) Effective 1/1/11	145 160
Mild to Moderate Disabilities	Effective 6/1/04 ALL Candidates must pass a content area exam appropriate to certification level 1-5, 4-8, 6-12 (e.g., 0014, or core subject-specific exams for middle or secondary grades)		*Educ. of Exceptional Students: Core Content Knowledge (0353) and Educ. of Exceptional Students: Mild/Moderate Disabilities (0542) Effective 6/1/04	143 141
	Prior to 6/1/04, a content area exam was required only for entry into a Mild/ Moderate 1-12 Practitioner Teacher Program, Non-Master's Certification-Only Alternate Program, and Master's Alternate Program.		*Note: (0353) and (0542) are not content area exams. Special Education: Core Knowledge and Mild to Moderate Applications (0543) Effective 1/1/11	153
Significant Disabilities	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) and Educ. of Exceptional Students: Severe to Profound Disabilities (0544) Effective 6/1/04	143 147
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Special Education: Core Knowledge and Severe to Profound Applications (0545) Effective 1/1/11	153
Visual Impairments/Blind	Elementary Education: Content Knowledge (0014) Effective 7/1/05	150	Educ. of Exceptional Students: Core Content Knowledge (0353) Effective 6/1/04	143
	Elementary Content Knowledge (0014) or (5014) Effective 10/12/10	150	Special Education: Core Content Knowledge and Applications (0354) Effective 1/1/11	145

E. Administrative Areas

Certification Area	Name of Praxis Test	Area Test Score
Principal	Educational Leadership: Administration and Supervision (0410) Prior to 1/1/09	620
Educational Leader – Level 1	School Leaders Licensure Assessment (1010) Effective 7/1/06	168
	School Leaders Licensure Assessment (1011) Effective 1/1/10	166
Educational Leader – Level 3	School Superintendent Assessment (1020) Effective 7/1/06	154

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

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 32:1833 (October 2006), amended LR 36:485 and 488 (March 2010), LR 36:2265 (October 2010), LR 37:3210 (November 2011).

**Chapter 6. Endorsements to Existing Certificates**  
**Subchapter A. Regular Education Level and Area**  
**Endorsements**

**§605. Requirements to add Early Childhood (Grades PK-3)**

A. Individuals holding a valid elementary certificate (e.g., 1-4, 1-5, 1-6, or 1-8) must achieve one of the following:

1. passing score for Praxis Principles of Learning and Teaching Early Childhood (#0621); or
2. 12 semester hours of combined nursery school and kindergarten coursework.

B. Individuals holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary school certificate (e.g., 6-12, 7-12, 9-12), special education certificate (other than early interventionist), or an All-Level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, music) must achieve the following:

1. passing score for Praxis Elementary Education: Content Knowledge exam (#0014);
2. passing score for Praxis Principles of Learning and Teaching Early Childhood (#0621) OR accumulate 12 credit hours of combined nursery school and kindergarten coursework;
3. nine semester hours of reading coursework.

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 32:1815 (October 2006), amended LR 37:883 (March 2011), LR 37:3215 (November 2011).

**Subchapter B. Special Education Level and Area**  
**Endorsements**

**§625. Requirements to add Early Interventionist Birth to Five Years**

A. Individuals holding a valid early childhood certificate (e.g., PK-K, PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 6-12, 7-12, 9-12), special education certificate, or an all-level K-12 certificate (art, dance, foreign language, health, physical education, health and physical education, and music) must achieve the following:

1. passing score for Praxis exams: Principles of Learning and Teaching; Early Childhood (#0621) and Special Education: Core Content Knowledge and Applications (#0354);
2. 18 credit hours that pertain to infants, toddlers, and preschoolers, as follows:
  - a. foundations in early childhood education and early intervention;
  - b. understanding and working with families of young children;
  - c. assessment in early intervention;
  - d. early intervention methods;

- e. teaming, physical and medical management in early intervention;
  - f. communication and literacy in early intervention;
3. nine semester hours of reading coursework.

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 32:1817 (October 2006), amended LR 37:552 (February 2011), amended LR 37:1382 (May 2011), LR 37:3215 (November 2011).

Catherine R. Pozniak  
Executive Director

1111#013

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 1922—Compliance Monitoring Procedures (LAC 28:XCI.Chapters 1-5)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1922—Compliance Monitoring Procedures*: §101. Monitoring, §103. Authority, §107. Corrective Action and Sanctions, §109. Components of the Continuous Improvement Monitoring Process, §111. Purpose, §301. Categories of Monitoring, §303. Timelines, §305. On-Site Visits, §307. Regulatory Issues Reviewed On-Site, §309. Activities Conducted Prior to the On-Site Visit, §311. Activities Conducted During the On-Site Visit, §313. Activities/Procedures at the Completion of the On-Site Visit, §315. Validation of Corrective Action, §317. Self-Review Conducted at the Local Level, §501. Introduction, §503. On-Site Fiscal Reviews of Sub-recipients, §505. Verification of Compliance Applicable Laws and Regulations for Non-Supplanting, Maintenance of Effort, Excess Cost and Other Financial Information During the Award Period, §507. Verification of the Accuracy of the Child Count, and §509. Recovery of Funds for a Misclassified Child.

Bulletin 1922 represents the LDOE special education monitoring protocols that are in alignment with the monitoring requirements in the federal regulations. Changes were required in the state's IDEA self-review monitoring process following a verification visit by the Office of Special Education Programs from the U.S. Department of Education. The self review process is discussed in this bulletin and requested changes reflect the required changes and minor document revisions to reflect current practices. The revisions also include the federal law requirement that the public agency (LEA) must correct noncompliance within one year from notification of the finding.

Chapters 1 and 3 are revised to reflect the deletion of language related to the LDOE's receipt of self-review information from the local education agencies, as well as minor changes to delete duplication of information. Chapter 5, Fiscal Monitoring, is deleted because the procedures for fiscal monitoring are presented in another document and are performed by personnel in the Fiscal/Budgets Office.

**Title 28**  
**EDUCATION**

**Part XCI. Bulletin 1922—Compliance Monitoring  
Procedures**

**Chapter 1. Overview**

**§101. Monitoring**

A. Monitoring is a process to ensure a free, appropriate, public education for all children with disabilities and to assess and ensure program effectiveness for all children with disabilities in public schools. This includes students with disabilities, ages 3-21.

B. The monitoring system for Louisiana, through the analysis of various quantitative and qualitative data, will focus state resources on improving educational program outcomes for students with disabilities through a comprehensive, data-based process. Annually, the Louisiana Department of Education (LDE) will select a list of specific variables and performance indicators for comparative purposes for all local educational agencies providing services to children with disabilities. This list is may be a combination of federally-required indicators, state performance indicators or goal areas.

C. The quantitative data will be used to determine specific performance profiles for local educational agencies (LEAs) using data relative to a set of variables referenced in 101B. Performance profiles will be issued annually. The quantitative data will be collected in relation to a set of variables selected by a statewide group of stakeholders from various agencies and entities called the Continuous Improvement Monitoring Process (CIMP) Steering Committee. This group will meet at least annually with the Louisiana Department of Education (LDE) to select only specific indicators that will be used to determine a LEA's performance status.

D. - D.1. ...

2. The LEAs designated as continuous improvement will not be targeted to receive an on-site compliance visit. Some districts may be required to develop a corrective action plan because of triggers within the data that signify concerns such as when the performance of students with disabilities is disproportionately below the state average in any of the required performance indicators. These performance indicators include, but are not limited to suspension, diploma, dropout, and state-wide assessment rates.

3. When critical issues of noncompliance are identified by means other than the performance profiles (including, but not limited to complaint logs, evaluation extension requests, and financial risk assessments), a targeted on-site compliance monitoring visit of the LEA may be required by the LDE.

E. Embodied in this process are proactive measures of self-evaluation, support, and technical assistance to ensure compliance with all regulatory requirements at the federal and state levels. Findings from data analysis, as well as findings from the on-site compliance visit, will be used to determine and allocate various resources for technical assistance and support to the LEA by the LDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30.414 (March 2004),

amended LR 31:3104 (December 2005), LR 37:3216 (November 2011).

**§103. Authority**

A. - E. ...

F. Regulations for Implementation of the Children with Exceptionalities Act, R.S.17:1941 et seq., Bulletin 1706: Subpart 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), LR 37:3216 (November 2011).

**§107. Corrective Action and Sanctions**

A. The LDE has the responsibility to monitor all public educational agencies with programs for children with disabilities within the state for compliance with applicable state and federal laws, regulations, and standards.

B. The LDE is authorized to take actions, consistent with applicable law, necessary to ensure compliance. Failure on the part of a participating agency to comply may result in the LDE, with the approval of its governing authority, the Board of Elementary and Secondary Education, withholding funds from the said agency. Prior to withholding any funds under this Section, the LDE shall provide reasonable notice and an opportunity for a hearing conducted by the State Board of Elementary and Secondary Education (BESE) to the LEA involved.

C. LDE determines the need for a corrective action plan (CAP) to address findings of non-compliance on an individual LEA case-by-case basis. If the LDE requires a CAP, it will be developed in collaboration with the LDE following the LEA's receipt of the LDE's monitoring report. The CAP shall be submitted for approval to the LDE within 35 business days of receipt of the monitoring report for However, upon receipt of the report, the LEA shall immediately begin correcting the findings of non-compliance documented in the report. The plan will address the activities the LEA will implement to correct the areas of non-compliance identified during the on-site visit. as soon as possible, but in no case more than one year from the date of the notification report from the LDE.

D. The progress toward completing the activities in the plan will be tracked by the LDE to determine if the timelines are being met. LEAs will submit evidence and data as requested by the LDE to show completion of activities and evidence of change in the LEA as a result of the corrective action plan. Based on a review of submitted evidence, the LDE will decide whether the LEA has met compliance requirements or determine whether a follow-up, on-site visit must be conducted to determine if the LEA has made systemic changes to correct the noncompliance addressed in the corrective action plan.

E. A written report of the findings from a review of the submitted evidence or from a follow-up visit will be issued to the LEA by the LDE within 30 business days of the review of the evidence or the on-site visit.

F. When continuing non-compliance is identified, the LDOE will require that an Intensive Corrective Action Plan (ICAP) be developed by the LEA in collaboration with the department, to address the continuing noncompliance. In conjunction with the implementation of the approved plan, the department will impose one or more of the following sanctions described below.

1. Advise the LEA of available sources of technical assistance that may help the LEA.

2. Direct the LEA to present the ICAP to the local school board for approval.

3. Direct the LEA to use IDEA Part B flow-through funds on the area or areas that the LEA is non-compliant. The LEA will submit evidence to the department of the specific funds targeted for areas of non-compliance. The department will monitor the expenditure of such funds on a consistent basis.

4. The LDE may determine that a special consultant or management team is necessary to assist the LEA in addressing areas of non-compliance. The LDE will select a special consultant or management team to collaborate with the LEA in developing and implementing an intensive corrective action plan. The special consultant and the ICAP activities must be approved by the local board and will be funded at the local level.

5. Identify the LEA as a high-risk grantee and impose special conditions on the LEA's IDEA Part B grant. The department will impose one or more of the following special conditions.

a. For each year of continuing non-compliance, withhold not less than 20 percent and not more than 50 percent of the LEA's IDEA Part B grant until the department determines the LEA has sufficiently addressed the areas in which the LEA needs intervention.

b. Seek to recover funds under section 452 of the General Education Provisions Act.

c. Withhold, in whole or in part, any further payments to the LEA under this part pursuant to Subparagraph a.

d. Refer the matter for other appropriate enforcement action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004), amended LR 31:3105 (December 2005), LR 32:1839 (October 2006), LR 37:3216 (November 2011).

### **§109. Components of the Continuous Improvement Monitoring Process**

A. ...

B. The monitoring system may incorporate and utilize strategies and components as listed below.

1. Analyze current data elements and databases that are captured by the LDE and are directly related to student outcomes.

2. Analyze the LEA grant application to track and monitor the allocation and use of Part B funds targeted to address priorities revealed through previous data sources in the monitoring process, as well as policy and procedural assurances.

3. Review complaint management logs regarding specific complaints in individual LEA.

4. Analyze Extended School Year Program data.

5. Analyze district and school accountability profiles.

6. Analyze FAPE tables and other mandated federal data reporting (i.e., e.g. personnel tables, child count data).

7. Analyze Pupil Progression Assurances/Reviews.

8. Review the personnel files related to certification, experience and training documentation.

9. Track corrective action on areas of non-compliance and validate previous corrective action reviews, documentation, and on-site reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 32:1840 (October 2006), LR 37:3217 (November 2011).

### **§111. Purpose**

A. The LDE has the responsibility to ensure that each participating agency in the state is in compliance with all applicable federal and state laws, regulations and standards required for the provision of a free and appropriate public education for all children with disabilities for whom each is legally responsible. To fulfill this responsibility, the LDE has established a purpose for conducting monitoring, as well as procedures and strategies that provide ongoing monitoring activities. The procedures provide continuous and comprehensive monitoring of all aspects of special education including the following:

1. - 3. ...

4. program, services, and placement implementation for students with disabilities three through twenty-one years of age; including transition from Part C by the child's third birthday;

5. professional development; and

6. fiscal requirements relative to programmatic issues of local educational agencies.

B. - B.3. ...

C. The information obtained as a result of the monitoring process will be utilized in the following ways:

1. to improve outcomes for all children with disabilities;

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:416 (March 2004), amended LR 31:3106 (December 2005), LR 37:3217 (November 2011).

## **Chapter 3. Operational Procedures for Compliance Monitoring**

### **§301. Categories of Monitoring**

A. - B. ...

C. - E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:3217 (November 2011).

### **§303. Timelines**

A. A schedule of on-site visits will be issued to LEAs by September of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:3217 (November 2011).

### **§305. On-Site Visits**

A. ...

B. Non-employees selected to serve as team members will be initially required to receive a minimum of eight hours of professional development specific to conducting on-site monitoring, conducted by the LDE. In addition, team leaders, serving in coordination with staff team leaders, will be required to receive 24 hours of professional development specific to leadership, investigative techniques for specific regulatory areas, and assimilating data for report writing conducted by the LDE, with follow-up training as necessary as determined by the state monitoring coordinator. Participants will receive a certificate that indicates their completion of the required professional development activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3106 (December 2005), LR 37:3218 (November 2011).

### **§307. Regulatory Issues Reviewed On-Site**

A. For focus category LEAs, the regulatory issues, qualitative and quantitative indicators reviewed will be specific to the variables targeted in the LEA's performance profile. These visits will focus on selected issues. In the event that other critical issues or triggers are identified by means other than the performance profiles, the LDE will direct the team to monitor those issues for non-compliance. These other means may include, but are not limited to, complaint logs, evaluation extension requests, and financial risk assessments.

B. The LDE will reserve the right to direct the team to review any and all regulatory issues that indicate non-compliance status in a LEA.

C. Data for the following major regulatory issues may be analyzed, reviewed, and utilized in the on-site monitoring process:

1. child identification;
2. individual evaluation;
3. IEP development;
4. provision of a free, appropriate, public education;
5. participation in statewide assessment;
6. transition at different programming levels;
7. placement in the least restrictive environment;
8. professional development and personnel standards;
9. program comparability (ASR);
10. facility accessibility and comparability;
11. procedural safeguards;
12. extended school year programming; and
13. discipline procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011).

### **§309. Activities Conducted Prior to the On-Site Visit**

A. ...

1. performance profiles;
2. LEA Application for IDEA Part B funds;
3. complaint logs and due process hearings relative to the LEA;

4. files/logs indicative of technical assistance provided to the LEA by the LDE;

5. information relative to the state's accountability system which is school-site specific;

6. school improvement plans;

7. data relative to statewide assessment for participation and performance;

8. data derived from the district composite reports;

9. information relative to certifications and professional development activities provided to personnel and parents; and

10. any other data the LDE determines is necessary to review as part of a comprehensive data review of the LEA.

B. The LEA supervisor/director of special education will be contacted, if necessary, for clarification of any concerns regarding the data. The data analysis will determine the locations within the LEA to be visited, the number and types of records to be reviewed, the methods (e.g. interviews, record review, and classroom observations) that will be used for validation of qualitative issues during on-site visits, and the composition of the monitoring team.

C. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011).

### **§311. Activities Conducted During the On-Site Visit**

A. - B. ...

C. Team members will visit sites, make observations, review records, and interview personnel.

D. The team leader will meet with the LEA special education director to review administrative issues. Additional data/information may be requested if further analysis is required for determining compliance status for specific regulatory issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011).

### **§313. Activities/Procedures at the Completion of the On-Site Visit**

A. - C. ...

D. Upon receipt of the report, the LEA will have 20 business days from the date of receipt of the report to respond to any findings, and 15 additional business days to develop a plan of corrective action to address findings of non-compliance described in the summary.

E. The LEA, in collaboration with the LDE, will be required to design a corrective action plan that defines specific supports and resources that the LEA must have in order to implement the corrective action plan. The CAP must demonstrate how the LEA will:

1. correct each individual case of noncompliance

2. correctly implement the specific regulatory requirement

F. Timelines must be developed that are specific to the corrective action required and to the issues of noncompliance. The LEA must return the report to the LDE

in hard copy and electronically. The timeline must indicate how the findings will be corrected as soon as possible, but in no case more than one year from identification by the LDE.

G. ...

H. If there is no responses from the LEA within the established timelines, the state director of special education will, notify the state superintendent of education.

I. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004), amended LR 31:3107 (December 2005), LR 37:3218 (November 2011).

### **§315. Validation of Corrective Action**

A. Upon receipt of the approved Corrective Action Plan (CAP) the LEA must begin to submit documentation of completed activities from the CAP agreed upon by the LEA and the LDE.

B. ...

C. All corrective action must be completed in accordance with the timelines that relate to each specific area of non-compliance. Documentation must be submitted to the LDE within the required timelines.

D. The LDE will conduct, when necessary, an on-site visit in the year following the initial on-site visit, or sooner if deemed necessary by the LDE, to validate the documentation of the implementation of the corrective action and to validate systemic change of areas of non-compliance. Validation of correction requires verification that the LEA has corrected each individual case of noncompliance and the LEA is correctly implementing the specific regulatory requirement.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004), amended LR 31:3108 (December 2005), LR 37:3219 (November 2011).

### **§317. Self-Review Conducted at the Local Level**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004), amended LR 31:3108 (December 2005), repealed LR 37:3219 (November 2011).

## **Chapter 5. Fiscal Monitoring**

### **§501. Introduction**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004), repealed 37:3219 (November 2011).

### **§503. On-Site Fiscal Reviews of Subrecipients**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004), repealed LR 37:3219 (November 2011).

### **§505. Verification of Compliance Applicable Laws and Regulations for Non-Supplanting, Maintenance of Effort, Excess Cost and Other Financial Information During the Award Period**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004), repealed LR 37:3219 (November 2011).

### **§507. Verification of the Accuracy of the Child Count**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004), amended LR 31:3108 (December 2005), repealed LR 37:3219 (November 2011).

### **§509. Recovery of Funds for a Misclassified Child**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:421 (March 2004), amended LR 31:3109 (December 2005), repealed LR 37:3219 (November 2011).

Catherine R. Pozniak  
Executive Director

1111#012

## **RULE**

### **Board of Elementary and Secondary Education**

#### **Minimum Foundation Program Student Membership Definition (LAC 28:I.1107)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the *Louisiana Administrative Code*, Title 28, Part I, §1107.C, MFP: Student Membership Definition. Changes are being made to add the New Orleans Center for Creative Arts (NOCCA) and the Louisiana School for Math, Science and the Arts (LSMSA) to the list of schools included in the membership definition. The changes bring the definition in line with the provisions of the Minimum Foundation Program resolution.

#### **Title 28**

#### **EDUCATION**

#### **Part I. Board of Elementary and Secondary Education Chapter 11. Finance and Property**

#### **§1107. Minimum Foundation Program**

A. - B.1. ...

C. MFP: Student Membership Definition

1. Definition. For state reporting for public education for the purpose of establishing the base student count for state funding, each parish/city and other local school system, recovery school district school, LSU and Southern Lab school, Office of Juvenile Justice school, New Orleans Center for Creative Arts (NOCCA), and Louisiana School for Math, Science, and the Arts (LSMSA) shall adhere to the following.

C.1.a. - D.1.e. ...

AUTHORITY NOTE: Promulgated in accordance with Art. VIII §13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 37:1142 (April 2011), LR 37:3219 (November 2011).

Catherine R. Pozniak  
Executive Director

1111#011

## RULE

### Board of Elementary and Secondary Education

#### Regulatory Documents—Rulemaking (LAC 28:I.1303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the *Louisiana Administrative Code*, Title 28, Part I, Chapter 13, Regulatory Documents, Section 1303, Rulemaking. After the BESE staff was asked to determine ways to shorten the process of adopting new and revised policy, it was determined that Rules may be submitted to the *Louisiana Register* for advertisement in the month in which the 90-day required advertisement period expires, which would not violate requirements of the Administrative Procedure Act. The changes to *Louisiana Administrative Code*, Title 28, Part I, Section 1303, Rulemaking, reflect that determination.

#### Title 28

#### EDUCATION

#### Part I. Board of Elementary and Secondary Education

#### Chapter 13. Regulatory Documents

#### §1303. Rulemaking

A. - B. ...

C. The following process must be followed for adoption of all rules.

1. The board approves a proposed Rule to be advertised as a Notice of Intent. The Notice of Intent approval will serve as authorization for the BESE executive director to submit the Notice of Intent to the *Louisiana Register* for final adoption as a Rule at the expiration of the required 90-day advertisement period, if no public comments are received relevant to said Notice of Intent. If comments are received regarding the Notice of Intent, the comments will be considered by the Board prior to final adoption as a Rule (refer to 2.e. through 2.f.ii. below).

2. - 2.c....

d. Upon publication of the Notice of Intent in the *Louisiana Register*, a period of 90 days must elapse before the Notice of Intent can be adopted as a Rule.

e. Any public comments received during the comment period are forwarded to the LDE/board office, to the appropriate BESE committee, and to the appropriate legislative committees for consideration.

f. - f.ii. ...

3. The deadline for submission of information for publication of Notices of Intent or Rules in the *Louisiana Register* is the tenth of the month.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 49:951 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:426 (March 2008), amended LR 37:3220 (November 2011).

Catherine R. Pozniak  
Executive Director

1111#010

## RULE

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

#### Criteria Pollutant Emissions Inventory (LAC 33:III.111, 311, 501, 605, 918, 919, 1513, 2115, 2139, 2141, 2153, and 5107)(AQ300)

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, 311, 501, 605, 918, 919, 1513, 2115, 2139, 2141, 2153, and 5107 (AQ300).

Applicable facilities within Louisiana are required to submit annual point source emission inventories of criteria pollutants based upon attainment/nonattainment area designations of the National Ambient Air Quality Standards (NAAQS). In 2006, the department launched a new emissions inventory reporting system, the Emissions Reporting and Inventory Center (ERIC). This revision will allow better compatibility between ERIC and the regulations. It will allow flexibility in updating the required elements for reporting in ERIC, as well as make the regulations easier to interpret, enforce, govern, and permit. In addition to the greater compatibility between the regulations and ERIC, additional applicability requirements are included to require facilities in a nonattainment area, or an area adjoining a nonattainment area, with a Standard Oil and Gas Air (SOGA) permit to report emissions in the emissions inventory. The Rule also includes additional requirements for facilities in an ozone nonattainment area. The basis and rationale for this Rule are to comply with the Federal Clean Air Act, as well as the Consolidate Emissions Reporting Rule (40 CFR 51, Subpart A). 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, unless specifically defined elsewhere.

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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), LR 37:3220 (November 2011).

### **Chapter 3. Regulatory Permits**

#### **§311. Regulatory Permit for Emergency Engines**

A. - J. ...

K. Emissions Inventory. Each facility subject to LAC 33:III.919 shall include emissions from all emergency engines, including temporary units, authorized by this regulatory permit in its annual emissions inventory.

L. - M. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:459 (March 2009), amended LR 37:3221 (November 2011).

### **Chapter 5. Permit Procedures**

#### **§501. Scope and Applicability**

A. - B.8. ...

C. Scope

1. - 10. ...

11. Emissions shall be calculated in accordance with LAC 33:III.919.G

12. Emissions estimation methods set forth in EPA's Compilation of Air Pollution Emission Factors (AP-42) and other department-accepted estimation methods may be promulgated or revised. As a result of new or revised AP-42 emission factors for sources or source categories and/or department-accepted estimation methods, changes in calculated emissions may occur. Changes in reported emission levels as required by LAC 33:III.919.F due solely to revised AP-42 emission factors or department-accepted estimation methods do not constitute violations of the air permit; however, the department may evaluate changes in emissions on a case-by-case basis, including but not limited to, assessing compliance with other applicable Louisiana air quality regulations.

13. If the emission factors or estimation methods for any source or source category used in preparing the annual emissions inventory required by LAC 33:III.919 differ from the emission factors or estimation methods used in the current air permit such that resulting "calculated" emissions reflect a significant change, notification of the use of updated emission factors or estimation methods shall be included in the Title V Annual Certification, as specified in the affected permit. The notification shall include the old and new emission factor or estimation method reference source and the date, volume, and edition (if applicable); the raw data for the reporting year used for that source category calculation; and applicable emission point and permit numbers that are impacted by such change. The notification shall include any other explanation, as well as the facility's intended time frame to reconcile the emission limits in the applicable permit. The department reserves the right to reopen a permit pursuant to LAC 33:III.529. For purposes of

this Paragraph, a significant change is defined as the lesser of the following:

a. a 5 percent increase or decrease in the total potential or actual emissions from the facility;

b. a 50 ton per year increase or decrease in the total potential or actual emissions from the facility; or

c. a 10 ton per year increase or decrease in the potential or actual emissions from any single emission point (stack, vent, or fugitive).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:3221 (November 2011).

### **Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking**

#### **§605. Definitions**

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

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*Current Total Point-Source Emissions Inventory*—the aggregate point-source emissions inventory for either NO<sub>x</sub> or VOC from the nine modeled parishes compiled from the emissions inventory records and updated annually in accordance with LAC 33:III.919 plus any banked ERC and pending ERC applications originally included in the base case inventory that have not expired.

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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 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 34:1890 (September 2008), LR 37:3221 (November 2011).

### **Chapter 9. General Regulations on Control of Emissions and Emission Standards**

#### **§918. Nonattainment Areas and Adjoining Parishes List**

A. For the purposes of the emissions inventory requirements set forth in LAC 33:III.919, the parishes located in the nonattainment areas as of June 1, 2011, as well as the parishes that adjoin the nonattainment areas, are listed in Tables 1-6 in Subsection B of this Section. Any parish designated by the EPA as a nonattainment area after June 1, 2011, or adjoining a nonattainment area designated by EPA after June 1, 2011, may not be listed in Tables 1-6 in Subsection B of this Section, but a facility located in that

parish is nevertheless subject to the requirements of LAC 33:III.919.A.1.a. Any facility located in a parish listed as a nonattainment area in Tables 1-6 in Subsection B of this Section and is redesignated by EPA as an attainment area after June 1, 2011, or adjoins a nonattainment area redesignated by EPA as an attainment area after June 1, 2011, shall continue to be subject to the requirements of LAC 33:III.919.A.1.a until otherwise directed by the department.

B. The following tables list all of the parishes located in the nonattainment areas as of June 1, 2011, as well as those parishes that adjoin the nonattainment areas.

Table 1	
Carbon Monoxide (CO) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 2	
Lead (Pb) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 3	
Nitrogen Dioxide (NO <sub>2</sub> ) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 4	
Ozone Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
0180	Ascension
0840	East Baton Rouge
1280	Iberville
1740	Livingston
3120	West Baton Rouge
Parish Code	Adjoining Parishes to Nonattainment Areas
0200	Assumption
0880	East Feliciana
1260	Iberia
2260	Pointe Coupee
2540	Saint Helena
2560	Saint James
2580	Saint John the Baptist
2620	Saint Martin
2840	Tangipahoa
3160	West Feliciana

Table 5	
Particulate Matter (PM <sub>10</sub> or PM <sub>2.5</sub> ) Nonattainment Areas and Adjoining Parishes	
Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

Table 6	
Sulfur Dioxide (SO <sub>2</sub> ) Nonattainment Areas and Adjoining Parishes	

Parish Code	Nonattainment Parish(es)
	None
Parish Code	Adjoining Parishes to Nonattainment Areas
	None

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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 33:2083 (October 2007), LR 37:3221 (November 2011).

## §919. Emissions Inventory

### A. Applicability

1. The provisions of this Section apply to the owner or operator of any facility located in Louisiana that meets any of the following criteria at any time during a reporting year:

a. the facility is located in a nonattainment area or an adjoining parish as listed in LAC 33:III.918.B, Tables 1-6, and the facility emits, has the *potential to emit*, as defined in LAC 33:III.502.A, or is permitted to emit a pollutant that meets or exceeds any threshold value listed in Tables 1-6, with the corresponding pollutant in the table name, of Paragraph A.2 of this Section;

b. the facility is located in an attainment parish and the facility emits, has the *potential to emit* as defined in LAC 33:III.502.A, or is permitted to emit a pollutant that meets or exceeds any threshold value listed in Table 7 in Paragraph A.2 of this Section;

c. the facility is defined as a major stationary source of hazardous air pollutants in Section 112(a)(1) of the federal Clean Air Act (CAA), or a *major source* of toxic air pollutants as defined in LAC 33:III.5103;

d. the facility has a 40 CFR Part 70 (Title V) operating permit regardless of emissions;

e. the facility has a portable source permit in accordance with LAC 33:III.513, operates at any time during a reporting year in a nonattainment area or an adjoining parish, and meets the applicability criteria of Subparagraph A.1.a of this Section; or

f. the facility is required by rule or permit to submit an emissions inventory.

2. The following tables list emissions threshold values that require the submission of an emissions inventory.

Table 1		
Carbon Monoxide (CO) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10	10
CO	10	50
Lead (Pb)	5	5
NO <sub>x</sub>	100	100
PM <sub>10</sub> or PM <sub>2.5</sub>	100	100
SO <sub>2</sub>	100	100
VOC	100	100

Table 2 Lead (Pb) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10	10
CO	100	100
Lead (Pb)	5	5
NO <sub>x</sub>	100	100
PM <sub>10</sub> or PM <sub>2.5</sub>	100	100
SO <sub>2</sub>	100	100
VOC	100	100

Table 3 Nitrogen Dioxide (NO <sub>2</sub> ) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10	10
CO	100	100
Lead (Pb)	5	5
NO <sub>x</sub>	10	50
PM <sub>10</sub> or PM <sub>2.5</sub>	100	100
SO <sub>2</sub>	100	100
VOC	100	100

Table 4 Ozone Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10	10
CO	100	100
Lead (Pb)	5	5
NO <sub>x</sub>	25	100
PM <sub>10</sub> or PM <sub>2.5</sub>	100	100
SO <sub>2</sub>	100	100
VOC	10	50

Table 5 Particulate Matter (PM <sub>10</sub> or PM <sub>2.5</sub> ) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10	10
CO	100	100
Lead (Pb)	5	5
NO <sub>x</sub>	10	50
PM <sub>10</sub> or PM <sub>2.5</sub>	10	50
SO <sub>2</sub>	10	50
VOC	10	50

Table 6 Sulfur Dioxide (SO <sub>2</sub> ) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10	10

Table 6 Sulfur Dioxide (SO <sub>2</sub> ) Nonattainment Area and Adjoining Parishes: Emissions Threshold Values		
Pollutant	Nonattainment Area Threshold Value (tons/year)	Adjoining Parishes to Nonattainment Area Threshold Value (tons/year)
CO	100	100
Lead (Pb)	5	5
NO <sub>x</sub>	100	100
PM <sub>10</sub> or PM <sub>2.5</sub>	100	100
SO <sub>2</sub>	10	50
VOC	100	100

Table 7 Attainment Areas: Emissions Threshold Values	
Pollutant	Threshold Value (tons/year)
Ammonia (NH <sub>3</sub> )	10
CO	100
Lead (Pb)	5
NO <sub>x</sub>	100
PM <sub>10</sub> or PM <sub>2.5</sub>	100
SO <sub>2</sub>	100
VOC	100

3. The requirements of this Section do not apply to *mobile sources* or *nonpoint sources* as defined in Subsection E of this Section.

B. The applicability of this Section for contiguous *agency interests (AIs)*, as defined in Subsection E of this Section, shall be determined by a threshold value that is the greater of:

1. the sum of the actual emissions;
2. the sum of the potentials to emit; or
3. the sum of permitted emissions for all contiguous AIs.

However, the emissions inventory shall be reported separately for each AI.

C. The owner or operator of any facility meeting the applicability criteria in Subparagraph A.1.a of this Section and located in any parish listed as a nonattainment area in LAC 33:III.918.B, Tables 1-6, but redesignated by EPA as an attainment area after June 1, 2011, or adjoins a nonattainment area redesignated by EPA as an attainment area after June 1, 2011, shall continue to be subject to Subparagraph A.1.a of this Section until otherwise directed by the department.

D. Once a facility meets the applicability criteria of Subparagraph A.1.a, b, c, d, e, f, g, or h of this Section, the owner or operator of the facility shall continue to submit an emissions inventory until otherwise directed by the department.

1. If a facility no longer meets any applicability criteria under Paragraph A.1 of this Section for one full calendar year, the owner or operator may request approval from the department in writing to discontinue submission of an emissions inventory. All such requests shall be submitted to the Office of Environmental Services.

a. An owner or operator who has submitted a request for approval to discontinue submission of an emissions inventory shall continue to submit an emissions inventory unless the owner or operator has received a response of approval from the department.

b. A request for departmental approval to discontinue submission of an emissions inventory will be considered if one or more of the following conditions have been met for one full calendar year:

i. the facility's permit has been rescinded and the most current emissions inventory shows the emissions to be below the applicable reporting thresholds in Paragraph A.2 of this Section;

ii. the facility has been permitted to emit pollutants below the reporting thresholds in Paragraph A.2 of this Section and the most current emissions inventory shows the emissions to be below the reporting thresholds;

iii. the facility's potential to emit has been below the applicable reporting thresholds in Paragraph A.2 of this Section and the most current emissions inventory shows the emissions to be below the reporting thresholds;

iv. the facility has not been a major stationary source of hazardous air pollutants in accordance with section 112(a)(1) of the federal Clean Air Act (CAA) or a major source of toxic air pollutants in accordance with LAC 33:III.Chapter 51;

v. the facility does not have a 40 CFR Part 70 (Title V) operating permit;

vi. the owner or operator of the facility is not required by rule or permit to submit an emissions inventory; or

vii. the facility operates in a nonattainment area or an adjoining parish and does not have a portable source permit as required by LAC 33:III.513.

2. No facility classes or categories are exempted from emissions inventory reporting.

E. Definitions. For the purposes of this Section, the terms below will have the meaning given herein.

*Actual Emissions*—a calculation, measurement, or estimate, in accordance with Subsection G of this Section, of the amount of a pollutant actually emitted during a calendar year or other period of time.

*Agency Interest (AI)*—any entity that is being regulated or is of interest to the department. Conceptually, an *agency interest* can be a site, facility, mobile source, area source, a person, or an organization.

*Attainment Area*—an area of the state that is not listed as a nonattainment area by the U.S. Environmental Protection Agency.

*Certified*—the status of an emissions inventory once the department has received both the emissions inventory and the certification statement required by this Section.

*Contiguous Facilities*—facilities under common control separated by 0.25 miles or less.

*Control Efficiency*—the percentage by which a control system or technique reduces the emissions from a source.

*Control System*—a combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of pollutants to the ambient air.

*Emissions Factor*—the ratio relating emissions of a specific pollutant to an activity or material throughput level.

*Facility*—all emissions sources from *stationary point sources*, as defined in LAC 33:III.605, under common control on contiguous property.

NOTE: A facility can be one or more AIs, and each AI must comply individually with Subsection C of this Section.

*Flash Gas Emissions*—emissions from depressurization of crude oil or condensate when it is transferred from a higher pressure to a lower pressure tank, reservoir, or other type of container.

*Fugitive Emissions*—emissions that do not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

*Mobile Source*—a motor vehicle, nonroad engine, or nonroad vehicle where:

a. a *motor vehicle* is any self-propelled vehicle used to carry people or property on a street or highway;

b. a *nonroad engine* is an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, and that is not affected by sections 111 or 202 of the CAA; and

c. a *nonroad vehicle* is a vehicle that is run by a nonroad engine and is not a motor vehicle or a vehicle used solely for competition.

*National Ambient Air Quality Standard (NAAQS)*—a standard established in accordance with section 109 of the CAA, including but not limited to, standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), and sulfur dioxide (SO<sub>2</sub>).

*Nonattainment Area*—an area (parish or group of parishes) that has been declared by the administrative authority to be not in compliance with a federal national ambient air quality standard and that is listed in the *Federal Register* as a *nonattainment area*.

*Nonpoint Sources* (previously known as *area sources*)—collectively represent individual sources that have not been inventoried as specific point or mobile sources. These individual sources treated collectively as *nonpoint sources* are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

*Ozone Season*—except as provided in LAC 33:III.2202, the period from May 1 to September 30, inclusively, of each year.

*Process*—an operation or function by a source that produces emissions, characterized by a Source Classification Code (SCC).

*Release Point*—the point where emissions from one or more processes are released into the atmosphere.

*Reporting Period*—the time frame during the reporting year for which emissions are being reported.

*Reporting Year*—the year for which an emissions inventory is being submitted.

*Routine Operations*—operations, not including any start-up/shutdown emissions, that are authorized and/or permitted by the department.

*Source*—the point at which the emissions are generated, typically a piece of, or a closely related set of, equipment.

#### F. Requirements

1. Data for emissions inventory and the certification statements shall be collected annually. The owner or operator of each facility that meets the applicability criteria of Paragraph A.1 of this Section shall submit both an emissions inventory and a certification statement required by Subparagraph F.1.c of this Section, separately for each AI, for all air pollutants for which a NAAQS has been issued and for all NAAQS precursor pollutants in a format specified by the department.

a. Both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section shall include actual emissions in tons per year of ammonia (NH<sub>3</sub>), carbon monoxide (CO), lead (Pb), nitrogen oxides (NO<sub>x</sub>), particulate matter of less than 10 microns (PM<sub>10</sub>), particulate matter of less than 2.5 microns (PM<sub>2.5</sub>), sulfur dioxide (SO<sub>2</sub>), and volatile organic compounds (VOC).

i. In addition to the requirements of Subsection C of this Section, the owner or operator of any facility located in the parish of Ascension, East Baton Rouge, Iberville, Livingston, St. Charles, St. James, St. John the Baptist, or West Baton Rouge is required to include actual emissions in tons per year of ethylene and propylene in both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section.

ii. Supporting Information. In order to meet federal emissions inventory requirements and regulations, support modeling analyses, permit projection of future control strategies, allow the measurement of progress in reducing emissions, facilitate preparation of state implementation plans, provide data for setting baselines for future planning, and for answering public requests for information, the emissions inventory shall include, but is not limited to, the required information listed in the following table. The emissions inventory shall also include all data required by the reporting system and applicable to the facility. The information provided does not constitute permit limits. Submittal of a report of excess emissions above allowable limits under this regulation does not pre-empt the need for compliance with provisions of LAC 33:III.Chapter 5 that require a permit request to initiate or increase emissions; nor does it qualify as a notice of excess emissions.

Supporting Information for Emissions Inventory		
Data Element	Description	Status
I. Inventory Information — Information describing the inventory being submitted.		
Reporting Year	The calendar year for which emissions estimates are calculated	Required
Inventory Type	The type of pollutants for which the inventory will contain	Required
Reporting Period Start Date	The first day of the reporting period	Required
Reporting Period End Date	The last day of the reporting period	Required
II. Facility Information — Information describing the facility (AI) for which the inventory is being submitted. A facility corresponds to one AI Number.		
Facility ID (AI Number)	Unique ID assigned by the department to each facility	Required
Facility Name	Facility name of the AI	Required
Owner	Name of person(s) or entity(ies) that own(s) the facility	Required
Owner Address	Mailing address of owner(s) of the facility	Required
Owner City	City of mailing address of owner(s) of the facility	Required
Owner State	State of mailing address of the owner(s) of the facility	Required
Owner Zip	Zip code of mailing address of the owner(s) of the facility	Required
Owner Phone	Phone number of the owner(s) of the facility	Required
Operator	Name of person(s) or entity(ies)	Optional

Supporting Information for Emissions Inventory		
Data Element	Description	Status
	that operate(s) the facility, if different from owner	
Facility Description	Description of business conducted at facility	Required
Facility Status	Operating status of the facility during the reporting period	Required
Address	Address of facility's physical location	Required
City	City of facility's physical location	Required
Parish	Parish of facility's physical location	Required
State	State of facility's physical location	Required
Zip Code	Zip code of facility's physical location	Required
Longitude (decimal degrees)	Longitude of facility front gate	Optional
Latitude (decimal degrees)	Latitude of facility front gate	Optional
UTM Easting (meters)	UTM easting of facility front gate (Universal Transverse Mercator easting is the distance east from 60 central meridians of 6-degree-wide zones starting at longitude 180 degrees)	Required
UTM Northing (meters)	UTM northing of facility front gate (Universal Transverse Mercator northing is the distance north from the equator)	Required
UTM Zone	Universal Transverse Mercator zone of facility front gate [15 or 16]	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Primary SIC Code	Standard Industrial Classification (SIC) code for the entire facility	Required
Primary NAICS Code	North American Industrial Classification System (NAICS) code for the entire facility	Required
ORIS Code	Four digit number assigned by the Energy Information Agency (EIA) at the U.S. Department of Energy to power plants owned by utilities	Optional
Comments	Miscellaneous information	Optional
III. Contact Information — Information describing the contact person(s) for each facility (AI).		
Contact Type	Emissions inventory (EI) facility contact person, EI consultant, EI billing party, or other	Required — Both EI billing party and EI facility contact are required.
Name	First and last name of contact person	Required
Title	Contact person's title	Required
Company	Name of company that employs the contact person, if any	Required
Address	Contact person's mailing address	Required
City	Contact person's city	Required
State	Contact person's state	Required
Zip Code	Contact person's zip code	Required
Email	Email address of contact person	Required
Phone	Phone number of contact person	Required
IV. Source Information — Information describing the point at which the		

Supporting Information for Emissions Inventory		
Data Element	Description	Status
emissions are generated; typically a piece of, or a closely related set of, equipment.		
Source ID	Unique identification assigned to the source by the facility and reported consistently over time	Required
NEDS ID	The National Emissions Data System (NEDS) point identification for the source from the department's legacy Emissions Inventory System	Optional
Subject Item ID	Subject item identification assigned by the department to the source, if available	Required
Source Description	Description of source	Required
Source Type	The type of equipment or unit that generates the emissions. Examples include heaters, boilers, flares, storage tanks, cooling towers, fugitive emissions, and spills.	Required
Permit Number	The number under which the source is permitted by the department.	Required, where applicable
EIQ Number	Emission Inventory Questionnaire (EIQ) number from the permit application	Required, where applicable
Status	Operating status of the source during the reporting period	Required
Permanent Shutdown Date	Date source was permanently taken out of service/no longer operating	Required if status is "permanently shutdown"
SIC Code	Standard Industrial Classification (SIC) code for the source	Required
NAICS Code	North American Industry Classification System (NAICS) code for the source	Optional
Comments	Miscellaneous information	Optional
Maximum Design Rate (MM BTU/hour)	Maximum design heat input	Optional
Firing Type	Describes the burner type for boilers: front, opposed, tangential, internal, or other	Optional
Serial Number	Serial number of equipment, if available	Optional
Construction Date	Date source was constructed, not put into operation	Optional
Initial Start-up Date	Date source actually started operating	Optional
Maximum Nameplate Capacity (megawatts)	For electrical generators powered by combustion unit(s), the maximum electrical generating output in megawatts (MW) that the generator is capable of producing on a steady-state basis and during continuous operation	Optional
Engine Rating (horsepower)	Power rating in horsepower (HP) for engines	Optional
V. Process Information — Information describing the operation or function by a source that produces emissions, characterized by a Source Classification Code (SCC). Process information is not required for source types that are "Fugitive Emissions," "GV XVII Emissions" and "Insignificant Activities."		
Process ID	Unique identification for the process assigned by the facility and reported consistently over time	Required
Source ID	Facility-assigned source identification that applies to this	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
	process record	
Process Description	Description of the emission process	Required
Status	Operating status of the process during the reporting period	Optional
Permanent Shutdown Date	Date process was permanently taken out of service/no longer operating	Required, if Status is "permanently shutdown"
Confidentiality	Flag indicating whether or not a declaration of confidentiality has been requested and granted by the secretary per LAC 33:I.Chapter 5, covering the process information	Optional
SCC	Source Classification Code (SCC) — a ten-digit EPA-developed code used to associate air pollution estimates with unique, identifiable industrial processes	Required
Material Name	Name of primary material used or produced by this process (the material on which the emissions calculations are based)	Required
Average Annual Throughput	Average annual throughput of material for the process	Required
Annual Throughput Units	Unit of measure for average annual throughput	Required
Average Ozone Season Throughput	Average daily throughput of material for the process during the ozone season	Required for facilities in ozone nonattainment areas
Ozone Season Throughput Units	Unit of measure for average ozone season throughput	Required for facilities in ozone nonattainment areas
Annual Average Ash Content	For solid fuels, the concentration of ash produced by the fuel, expressed as a percentage of total fuel weight averaged over the reporting period for the process	Required
Ozone Season Average Ash Content	For solid fuels, the concentration of ash produced by the fuel, expressed as a percentage of total fuel weight averaged over the emissions inventory ozone season for the process	Optional
Annual Average Sulfur Content	The concentration of sulfur in the fuel, expressed as a percentage of fuel weight averaged over the reporting period for the process	Required
Ozone Season Average Sulfur Content	The concentration of sulfur in the fuel, expressed as a percentage of fuel weight averaged over the emissions inventory ozone season for the process	Optional
Annual Average Heat Content	Total annual heat input for combustion units	Required
Annual Average Heat Content Units	Unit of measure for annual average heat content	Required
Ozone Season Average Heat Content	Total heat input for combustion units during Ozone Season	Required for facilities in ozone nonattainment areas

Supporting Information for Emissions Inventory		
Data Element	Description	Status
Ozone Season Average Heat Content Units	Unit of measure for ozone season average heat content	Required for facilities in ozone nonattainment areas
Spring Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the spring season, March through May	Required
Summer Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the summer season, June through August	Required
Fall Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the fall season, September through November	Required
Winter Throughput	Seasonal operating percentage—the percentage of total annual throughput that occurs during the winter season, January, February, and December of the same calendar year	Required
Average Hours per Day	The actual number of hours per day for which the process is in operation	Required
Average Days per Week	The actual number of days per week for which the process is in operation	Required
Total Weeks	The actual number of weeks per year for which the process is in operation	Required
VI. Emission Factor — Information describing a ratio relating emissions of a specific pollutant to an activity or material throughput level. The emissions factor describes the calculation for a pollutant emitted by a specific process. The emissions calculation is of the form $E = A * EF$ , where E is the emissions, A is the material or activity rate, and EF is the emission factor. The emission factor is required when using an emissions factor to calculate emissions.		
Process ID	Facility-assigned process identification to which the emission factor applies	Required
Pollutant	Pollutant for which the emission factor applies	Required
Emission Factor	Emission factor numeric value for the specified pollutant	Required
Emissions Units	The numerator unit for the emission factor (i.e., the unit of the emissions calculated by the factor).	Required
Material or Activity	Material name for emission factor	Required
Material or Activity Rate	The denominator unit for the emission factor (i.e., the unit for the material throughput).	Required
Emission Factor Source	Source of the emission factor (stack test, AP-42, etc.)	Required
VII. Control System Information — Information describing the system where control measures are applied at or to a source or process to reduce the amount of a pollutant released into the environment. The information describes the control equipment chain (series of one or more control devices) that is used to control or abate emissions from a source. The control system information is required when control efficiency is used to calculate emissions.		
Control System ID	Unique identification assigned to the control system by the facility and reported consistently over time	Required
Subject Item ID	Subject item identification assigned by the department to	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
	the control equipment, if available	
Control System Description	Description of the control equipment chain	Required
Status	Operating status of the release point during the reporting period	Optional
Primary Device Type	Type of primary control device (e.g., flare, scrubber, condenser, and vapor recovery unit)	Required
Secondary Device Type	Secondary control device in series, not intended for backup or alternate control devices. Required if the control system has more than one control device in series.	Required, where applicable
VIII. Control Efficiency — Information describing the percentage by which a control system or technique reduces the emissions from a source. The control efficiency is required when control efficiency is used to calculate emissions.		
Control System ID	Unique identification assigned to the control system by the facility and reported consistently over time	Required
Pollutant	Pollutant for which the control efficiency applies	Required
Primary Device Efficiency	Emission reduction efficiency of the primary control device (percent)	Optional
Secondary Device Efficiency	Emission reduction efficiency of the secondary control device (percent)	Optional
Total Efficiency	Net emission reduction efficiency of all emissions collection devices (percent)	Required
IX. Release Point Information — Information describing the point where emissions from one or more processes are released into the atmosphere.		
Release Point ID	Unique identification assigned to the release point by the facility and reported consistently over time	Required
Subject Item ID	Subject item identification assigned by the department to the release point, if available	Required
Release Point Description	Description of emissions release point	Required
Release Point Type	Release point type (e.g., vertical stack, horizontal stack, gooseneck stack, and area)	Required
Status	Operating status of the release point during the reporting period	Optional
Permanent Shutdown Date	Date release point was permanently taken out of service/no longer operating	Required, if Status is "permanently shutdown"
Height (feet)	Physical height of release point above the surrounding terrain	Required
Diameter (feet)	Diameter of the release point	Required
Width (feet)	Width of area for area release point types. This is the shorter dimension of the rectangular area over which the emissions occur.	Required for fugitive and area release point types
Length (feet)	Length of area for area release point types. This is the longer dimension of the rectangular area over which the emissions occur.	Required for fugitive and area release point types
Orientation (degrees)	Orientation (bearing) of long axis of area release point types for fugitive or area sources, measured in degrees of clockwise rotation from true	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
	north. For stack or vent release point types, the orientation of the release point from vertical	
Flow Rate (feet <sup>3</sup> /second)	Exit gas flow rate (actual cubic feet per second)	Required
Velocity (feet/second)	Exit gas velocity	Required
Temperature (degrees Fahrenheit)	Exit gas temperature at release point (if unknown, ambient temperature of 78 degrees Fahrenheit)	Required
Moisture Content (%)	Moisture content of exit gas stream, designated as a percentage	Optional
Longitude (decimal degrees)	Longitude of release point	Optional
Latitude (decimal degrees)	Latitude of release point	Optional
UTM Easting (meters)	Universal Transverse Mercator easting of release point	Required
UTM Northing (meters)	Universal Transverse Mercator northing of release point	Required
UTM Zone	Universal Transverse Mercator zone of release point [15 or 16]	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required
Accuracy (meters)	Measure of accuracy of the release point coordinates (if using GPS reading, accuracy of GPS device)	Required
Horizontal Collection Method	Method used to measure or estimate the release point coordinates (e.g., USGS quad, satellite photo, GPS, address geocoding, or other)	Required
X. Portable Source Location — Information describing the specific location or locations at which a portable source released emissions over the reporting period. This is applicable to facilities operated and permitted under LAC 33:III.513.		
Location ID	Unique identification assigned by facility to the location and reported consistently over time, if any	Required
Release Point ID	Facility-assigned release point identification for which this is a supplemental location, if any	Required
Start Date	Date the release point was moved to this location	Required
End Date	Date the release point was moved from this location	Required
Parish	Parish containing this location	Required
Longitude (decimal degrees)	Longitude of release point at this location	Optional
Latitude (decimal degrees)	Latitude of release point at this location	Optional
UTM Easting (meters)	Universal Transverse Mercator easting of release point at this location	Required
UTM Northing (meters)	Universal Transverse Mercator northing of release point at this location	Required
UTM Zone	Universal Transverse Mercator zone of release point [15 or 16] at this location	Required
Datum	Code that represents the reference datum used to determine the location coordinates	Required

Supporting Information for Emissions Inventory		
Data Element	Description	Status
Accuracy (meters)	Measure of accuracy of the location's release point coordinates (if using GPS reading, accuracy of GPS device)	Required
Horizontal Collection Method	Method used to measure or estimate the location's release point coordinates (e.g., USGS quad, satellite photo, GPS, address geocoding, or other)	Required
XI. Emissions Record — Information describing the emissions for a specified combination of process (source and operating mode), control equipment, and release point.		
Source ID	Facility-assigned source identification for this emission record	Required
Process ID	Facility-assigned process identification for this emission record	Required
Control System ID	Facility-assigned control system identification for this emission record	Optional
Release Point ID	Facility-assigned release point identification for this emission record	Required
Location ID	Facility-assigned location identification if this is a portable source operating at a location other than the location on the release point record	Optional
Emission Type	Routine, start-up/shutdown, upset/malfunction/other, variance [NOTE: Separate emission records must be submitted showing the total and ozone season emissions for each applicable category.]	Required
Pollutant	Pollutant emitted	Required
Total Emissions	Total emissions of specified pollutant for the reporting period	Required
Emissions Units	Unit of measure for total emissions (tons or pounds)	Required
Estimation Method	The method used to calculate or estimate emissions (AP-42, mass balance, etc.)	Required
Ozone Season Emissions (pound/day)	Ozone season average daily emissions of specified pollutant	Required for facilities in ozone nonattainment areas
Ozone Season Estimation Method	A code indicating the method used to calculate or estimate emissions (AP-42, mass balance, etc.)	Required for facilities in ozone nonattainment areas
Number of Start-ups	Number of start-up events for which this record applies (only for emissions records of permitted start-ups/shutdowns)	Optional
Number of Shutdowns	Number of shutdown events for which this record applies (only for emissions records of permitted start-ups/shutdowns)	Optional

iii. Ozone Nonattainment Area Requirement. In addition to the requirements of Subsection C of this Section, the owner or operator of any facility located in an ozone nonattainment area that meets the applicability criteria of Subparagraph A.1.a of this Section shall submit an emissions inventory that includes:



(a). ozone season average daily emissions (in pounds/day) of CO, NO<sub>x</sub>, VOC, ethylene, and propylene;

(b). average ozone season throughput;

(c). ozone season average heat content (in MMBtu/ozone season); and

(d). ozone season estimation method for emissions of CO, NO<sub>x</sub>, VOC, ethylene, and propylene.

b. Actual emissions shall be reported for all sources of emissions at a facility, including but not limited to, emissions from routine operations, General Condition XVII emissions (as described in LAC 33:III.537), fugitive emissions, flash gas emissions, emissions from insignificant sources (as described in LAC 33:III.501.B.5, Insignificant Activities List, A—Based on Size or Emission Rate, and D—Exemptions Based on Emissions Levels), emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime, and emissions in excess of permit emission limitations, regardless of the amount.

c. Certification Statement. A certification statement, required by Section 182(a)(3)(B) of the federal Clean Air Act, shall be signed by a *responsible official*, as defined in LAC 33:III.502.A, for the facility or facilities and shall be submitted for each emissions inventory to attest that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The certification statement shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

d. Both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section shall be submitted to the Office of Environmental Services by April 30 of each year (for the reporting period of the previous calendar year that coincides with period of ownership or operatorship), unless otherwise directed by the department. Any subsequent revisions shall be accompanied by a certification statement.

i. The owner or operator of any facility located in a parish designated by EPA as a nonattainment area or within a nonattainment area after June 1, 2011, and that meets the applicability criteria in Subparagraph A.1.a of this Section, shall submit both an emissions inventory and the certification statement required by Subparagraph F.1.c of this Section to the Office of Environmental Services by April 30 of the year following the first full calendar year of the nonattainment designation by EPA, unless otherwise directed by the department.

ii. The owner or operator of any facility located in a parish that adjoins a parish designated by EPA as a nonattainment area or within a nonattainment area after June 1, 2011, and that meets the applicability criteria in Subparagraph A.1.a of this Section, shall submit both an emissions inventory and the certification statement required by Subparagraph F.1.c of this Section to the Office of Environmental Services by April 30 of the year following the first full calendar year of the nonattainment designation by EPA, unless otherwise directed by the department.

iii. The owner or operator of any facility that has a portable source permit in accordance with LAC 33:III.513 and meets the applicability criteria in Paragraph A.1 of this Section shall submit both an emissions inventory and the certification statement required by Subparagraph F.1.c of

this Section for the entire period of ownership or operatorship during the reporting year.

2. The reporting period of both the emissions inventory and the certification statement required by Subparagraph F.1.c of this Section, shall coincide with the period of ownership or operatorship during the reporting year. When there is a change of ownership of any facility to which this Section applies, submitted in accordance with LAC 33:III.517.G, at any time during a reporting year, each owner shall submit both an emissions inventory and certification statement required by Subparagraph F.1.c of this Section, with a start and/or end date that coincides with the date of transfer of ownership or operatorship.

3. Special Inventories. Upon request by the administrative authority, the owner or operator of any facility subject to LAC Title 33 shall file additional emissions data with the department. The request shall specify a reasonable time for response that shall not be less than 60 days from receipt of the request.

4. The department will post a notice on the department's website ([www.deq.louisiana.gov](http://www.deq.louisiana.gov)) advising of any planned changes in required data elements or reporting format, so that entities subject to reporting requirements under this Section will be able to make the necessary adjustments.

G. Calculations. Actual measurement with continuous emissions monitoring systems (CEMS) or approved stack testing shall be used for reporting of emissions from an emissions point when such data exists. In the absence of CEMS or stack test data, emissions shall be calculated using methods found in the most recent edition, as of December 31 of the current reporting year, of EPA's Compilation of Air Pollution Emission Factors (AP-42), calculations published in engineering journals, and/or EPA or department-approved estimation methodologies.

H. Enforcement. The department reserves the right to initiate formal enforcement actions, under R.S. 30:2025, for failure to submit emissions inventories as required in this Section.

I. Fees. The annual emissions inventory will be used to assess the criteria pollutant annual fee in accordance with LAC 33:III.223.

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), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:184 (February 1993), repromulgated LR 19:485 (April 1993), amended LR 19:1418 (November 1993), LR 20:1101 (October 1994), LR 22:339 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2438 (October 2005), LR 32:241 (February 2006), LR 33:2084 (October 2007), LR 37:3222 (November 2011).

## **Chapter 15. Emission Standards for Sulfur Dioxide §1513. Recordkeeping and Reporting**

A. - D. ...

E. All compliance data shall be made available to a representative of the department or the U.S. EPA on request. When applicable, compliance data shall be reported to the

department annually in accordance with LAC 33:III.919. In addition, quarterly reports of three-hour excess emissions and reports of emergency conditions in accordance with LAC 33:I.Chapter 39 shall be made.

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 18:376 (April 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1671 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1013 (June 2007), LR 37:3229 (November 2011).

## **Chapter 21. Control of Emission of Organic Compounds**

### **Subchapter A. General**

#### **§2115. Waste Gas Disposal**

A. Any waste gas stream containing volatile organic compounds (VOC) from any emission source shall be controlled by one or more of the applicable methods set forth in Subsections B-H of this Section. This Section shall apply to all waste gas streams located at facilities that have the potential to emit 25 TPY or more of VOC in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge; 50 TPY or more of VOC in the parishes of Calcasieu and Pointe Coupee; or 100 TPY or more of VOC in any other parish. This Section does not apply to waste gas streams that must comply with a control requirement, meet an exemption, or are below an applicability threshold specified in another section of this Chapter. This Section does not apply to waste gas streams that are required by another federal or state regulation to implement controls that reduce VOC to a more stringent standard than would be required by this Section.

B. Control Requirements for Operations that Commenced Construction Prior to January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1300°F (704°C) for 0.3 second or greater in a direct-flame afterburner or an equally effective device which achieves a removal efficiency of 95 percent or greater, as determined in accordance with Paragraph K.1 of this Section, or if emissions are reduced to 50 ppm by volume, whichever is less stringent.

C. Control Requirements for Operations that Commenced Construction On or After January 20, 1985. Nonhalogenated hydrocarbons shall be burned at 1600°F (870°C) for 0.5 second or greater in a direct-flame afterburner or thermal incinerator. Other devices will be accepted provided 98 percent or greater VOC destruction or removal efficiency can be demonstrated, as determined in accordance with Paragraph K.1 of this Section, or if emissions are reduced to 20 ppm by volume, whichever is less stringent.

D. Control Requirements for Existing Polypropylene Plants Using Liquid Phase Processes. All waste gas streams containing VOCs at the following sources in existing polypropylene plants using liquid phase processes shall be controlled as specified in Subsection C of this Section:

1. polymerization reaction section (i.e., reactor vents);
2. material recovery section (i.e., decanter vents, neutralizer vents, by-product and diluent recovery operation vents); and
3. product finishing section (i.e., dryer vents and extrusion and pelletizing vents).

E. Control Requirements for Existing High-Density Polyethylene Plants Using Liquid Phase Slurry Processes. All waste gas streams containing VOCs at the following sources in existing high-density polyethylene plants using liquid phase slurry processes shall be controlled as specified in Subsection C of this Section:

1. material recovery section (i.e., ethylene recycle treater vents); and
2. product finishing section (i.e., dryer vents and continuous mixer vents).

F. Control Requirements for Polystyrene Plants Using Continuous Processes. The emissions from the material recovery section (e.g., product devolatilizer system) shall be limited to 0.12 kg VOC/1,000 kg of product.

G. Control Requirements for Halogenated Hydrocarbons. The halogenated hydrocarbons shall be combusted or controlled by other methods specified in Subsection H of this Section that achieve a removal efficiency of 95 percent or greater, as determined in accordance with Paragraph K.1 of this Section. If combusted, the halogenated products of combustion shall be reduced to an emission level acceptable to the administrative authority.

H. Alternative Control Requirements. Other methods of control (such as, but not limited to, carbon adsorption, refrigeration, catalytic and/or thermal reaction, secondary steam stripping, recycling, or vapor recovery system) may be substituted for burning provided the substitute is acceptable to the administrative authority and it achieves the same removal efficiency as required by this Section and determined in accordance with Paragraph K.1 of this Section or it achieves a degree of control not practically or safely achieved by other means.

#### I. Exemptions

1. All waste gas streams containing VOCs, except those subject to Subsections D, E, and F of this Section, are exempt from the requirements of this Section if any of the following conditions are met:

a. it can be demonstrated that the waste gas stream is not a part of a facility that emits, or has the potential to emit, 25 TPY or more of VOC in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge; 50 TPY or more of VOC in the parishes of Calcasieu and Pointe Coupee; or 100 TPY or more of VOC in any other parish;

b. it is a waste gas stream from a low-density polyethylene plant and no more than 1.1 pounds of ethylene per 1,000 pounds (1.1 kg/1000 kg) of product are emitted from all the waste gas streams associated with the formation, handling, and storage of solidified product;

c. it is a waste gas stream having a combined weight of VOCs equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period; or

d. it is a waste gas stream with a concentration of VOCs less than 0.44 psia true partial pressure (30,000 ppm) except for the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, St. James, and West Baton Rouge in which the concentration of VOCs in the waste gas stream must be less than 0.044 psia true partial pressure (3,000 ppm).

2. Except for waste gas streams subject to Subsections D, E, and F of this Section, the administrative authority may

waive the requirements of this Section if one of the following conditions is met:

a. it will not support combustion without economically impractical amounts of auxiliary fuel; or

b. its disposal cannot be practically or safely accomplished by the means described herein or other equivalent means without causing undue economic hardship.

3. Waste gas streams subject to Subsections D, E, and F of this Section are exempt from the requirements of this Section if it can be demonstrated that the waste gas stream has a concentration of VOCs no greater than 408 ppm by volume.

J. Test Methods. Compliance with Subsections B-H of this Section shall be determined by applying the following test methods, as appropriate:

1. Test Methods 1-4 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining flow rates, as necessary;

2. Test Method 18 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining gaseous organic compounds emissions by gas chromatography;

3. Test Method 25 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous nonmethane organic emissions as carbon;

4. Test Method 25A or 25B (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003) for determining total gaseous organic concentration using flame ionization or nondispersive infrared analysis; and

5. modified test methods approved or specified by the administrative authority.

K. Compliance. All facilities affected by this Section shall be in compliance as soon as practicable but in no event later than August 20, 2003. A facility that has become subject to this regulation as a result of a revision of the regulation shall comply with the requirements of this Section as soon as practicable, but in no event later than one year from the promulgation of the regulation revision.

1. Compliance with LAC 33:III.2115 shall be demonstrated at the owner/operator's expense as requested by the administrative authority. Such demonstration shall consist of control device destruction efficiency or recovery efficiency testing. Such compliance testing is in addition to the continuous monitoring required under Paragraph K.2 of this Section.

2. The owner/operator of any facility subject to this Section shall install and maintain monitors to accurately measure and record operational parameters of all required control devices as necessary to ensure the proper functioning of those devices in accordance with the design specifications, including but not limited to:

a. the exhaust gas temperature of direct flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed;

b. the breakthrough of volatile organic compounds in a carbon adsorption unit;

c. the total amount of volatile organic compounds recovered by carbon adsorption or other waste gas stream recovery systems during a calendar month;

d. the dates for any maintenance of the required control devices and the estimated quantity and duration of volatile organic compound emissions during such activities; and

e. any other parameters affecting or related to waste gas streams as considered necessary by the administrative authority.

L. Recordkeeping. The owner or operator of any facility subject to this Section shall maintain the following information on the premises for at least two years and shall make such information available to representatives of the Louisiana Department of Environmental Quality and the Environmental Protection Agency upon request:

1. a record for each vent of the results of any testing conducted at the facility in accordance with the provisions specified in Subsections J and K of this Section;

2. the date for any maintenance and repair of required control devices and the estimated quantity and duration of volatile organic compound emissions during such activities;

3. records for each vent required to satisfy the provisions of Paragraph K.2 of this Section to demonstrate the proper functioning of applicable control equipment to design specifications; and

4. records to demonstrate that the criteria are being met for any exemption claimed.

M. This Section does not apply to safety relief and vapor blowdown systems where control cannot be accomplished because of safety or economic considerations. However, the emissions from these systems shall be reported to the department as required under LAC 33:III.919. Emergency conditions shall be reported in accordance with LAC 33:I.Chapter 39.

N. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Section shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply.

*Safety Relief and Vapor Blowdown Systems*—the emergency escape of gas from a process unit through a valve or other mechanical device, in order to eliminate system overpressure or in the case of an operational emergency.

*Waste Gas Stream*—any gas stream, excluding *fugitive emissions* as defined in LAC 33:III.Chapter 5, containing VOC and discharged from a processing facility directly to the atmosphere or indirectly to the atmosphere after diversion through other process equipment. Process gaseous streams that are used as primary fuels are excluded. The streams that transfer such fuels to a plant fuel gas system are not considered to be waste gas.

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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:960 (November 1990), LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 19:317 (March 1993), LR 22:1212 (December 1996), LR 24:21 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1764 (August 2002), LR 30:745 (April 2004), LR 30:1672 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 37:3230 (November 2011).

**Subchapter G. Petroleum Refinery Operations**

**§2139. Refinery Vacuum Producing Systems**

A. Control of Steam Jet Ejectors and Mechanical Pumps. Emissions of volatile organic compounds from steam jet ejectors and mechanical pumps shall be controlled by one of the applicable methods specified in LAC 33:III.2115.B, C, and G. Compliance shall be determined and records shall be kept as specified in LAC 33:III.2115.J, K, and L.

B. Emissions of volatile organic compounds from a hot-well with a contact condenser shall be controlled by covering the hot-well and controlling the vapors by one of the applicable methods specified in LAC 33:III.2115.B, C, and G. Compliance shall be determined and records shall be kept as specified in LAC 33:III.2115.J, K, and L.

C. ...

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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 24:917 (May 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 37:3232 (November 2011).

**§2141. Refinery Process Unit Turnarounds**

A. Emissions of volatile organic compounds from petroleum refinery process unit turnarounds shall be controlled by pumping the liquid contents to storage and depressurizing the processing units to 5 psig (pounds per square inch gauge) or below before venting to the atmosphere. Control of the vapors during the depressurization prior to venting to atmosphere shall be accomplished by one of the applicable methods specified in LAC 33:III.2115.B, C, and G. Compliance shall be determined and records shall be kept as specified in LAC 33:III.2115.J, K, and L.

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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), amended by the Office of the Secretary, Legal Affairs Division, LR 37:3232 (November 2011).

**Subchapter M. Limiting Volatile Organic Compound (VOC) Emissions from Industrial Wastewater**

**§2153. Limiting VOC Emissions from Industrial Wastewater**

A. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings normally used in the field of air pollution control. Additionally the following meanings apply, unless the context clearly indicates otherwise.

\* \* \*

*Plant*—all facilities located within a contiguous area, under common control, and identified by the Plant ID number as assigned by the department, within the parish in which the plant is primarily located, for inclusion in the emissions inventory.

\* \* \*

B. - 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 Radiation Protection, Air Quality Division, LR 21:936 (September 1995), amended LR 22:1212 (December 1996), LR 24:26 (January 1998), LR 25:850 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1765 (August 2002), LR 30:747 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2441 (October 2005), LR 33:2087 (October 2007), LR 37:3232 (November 2011).

**Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program**

**Subchapter A. Applicability, Definitions, and General Provisions**

**§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions**

A. Annual Emissions Reporting. The owner or operator of any major source that meets the applicability requirements in LAC 33:III.5101.A and emits any toxic air pollutant listed in LAC 33:III.5112, Table 51.1 or 51.3, shall submit a completed annual emissions report to the Office of Environmental Services in a format specified by the department. The owner or operator shall identify on the emissions report the quantity of emissions in the previous calendar year for any such toxic air pollutant emitted. Beginning with the report due in 2012, the annual emissions report shall meet the following requirements.

1. The owner or operator of any major source subject to the requirements in this Subsection shall submit a completed annual emissions report to the Office of Environmental Services on or before April 30 of each year, unless otherwise directed by the administrative authority, that shall identify the quantity of emissions of all toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, for the previous calendar year.

A.2. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:1673 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2447 (October 2005), LR 33:2093 (October 2007), LR 33:2622 (December 2007), LR 37:3232 (November 2011).

Herman Robinson, CPM  
Executive Council

1111#077

**RULE**

**Department of Environmental Quality  
Office of the Secretary**

Permit Term or Condition Referencing  
40 CFR Part 63, Subpart DDDDD  
(LAC 33:III.501)(AQ323)

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.501.B.8 (AQ323).

On September 13, 2004, EPA promulgated 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (69 FR 55253). subpart DDDDD was subsequently vacated and remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit on June 8, 2007. The court made its ruling effective on July 30, 2007.

Prior to the court's ruling, LDEQ had incorporated the provisions of subpart DDDDD into numerous Part 70 Operating Permits. Therefore, LDEQ promulgated LAC 33:III.501.B.8 to specify that "any term or condition in a permit that references 40 CFR part 63, subpart DDDDD shall be null and unenforceable."

In response to the court's vacatur and remand, EPA re-promulgated subpart DDDDD on March 21, 2011 (76 FR 15608). Because provisions of the final Rule must be incorporated into certain part 70 permits as "applicable requirements" per 40 CFR 70.6(a), LAC 33:III.501.B.8 must be repealed. The basis and rationale for this Rule are to repeal and reserve LAC 33:III.501.B.8. 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 5. Permit Procedures**

**§501. Scope and Applicability**

A. - B.7. ...

8. Repealed.

C. - C.14. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 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 by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626

(December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:3233 (November 2011).

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1111#078

**RULE**

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

Solid Waste  
(LAC 33:VII.Chapters 1, 3, 4, 5,  
7, 13, 15, 30, and 103)(SW053)

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 solid waste regulations, LAC 33:VII.Subpart 1 and 2 (SW053).

The solid waste regulations are being updated. The new Rule will change the way solid waste permits are issued along with the application process for solid waste permits. Other changes will include definition changes, additional exemptions, and the establishment of a new annual compliance certification requirement.

The current solid waste permit system is not as efficient or productive as it could be. The current system has resulted in a backlog of pending solid waste permits that is unacceptable to the agency, the regulated community and the public. The regulation changes will allow for a more direct permit approach that will limit the need for notices of deficiencies to be issued to permit applicants and will also enable DEQ surveillance personnel to inspect these facilities more appropriately by having a permit that is written with clearer conditions. The Rule will also provide additional clarification in definitions and exemptions. The basis of this Rule is to make necessary changes and clarifications in the solid waste regulations and to allow for a better permit process. 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 VII. Solid Waste**

**Subpart 1. Solid Waste Regulations**

**Chapter 1. General Provisions and Definitions**

**§115. Definitions**

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

\* \* \*

*Closure Permit*—written authorization issued by the administrative authority to a person for the closure of a facility used to process or dispose of solid waste in accordance with the Act, these regulations, and specified terms and conditions.

\* \* \*

*General Permit*—written authorization issued by the administrative authority to allow for a specific activity or type of operation, not based on a specific site, to process or dispose of solid waste in accordance with the Act, these regulations, and specified terms and conditions.

\*\*\*

*Incinerator Waste-Handling Facility*—a facility that processes solid waste by thermally oxidizing and/or decomposing the solid waste in an incinerator.

\*\*\*

*Non-Processing Transfer Station*—a solid waste facility where solid waste is transferred directly or indirectly from collection vehicles to other vehicles for transportation without processing, except compaction used for the reduction of volume in waste (see *Process*).

\*\*\*

*Principal Executive Officer*—the chief executive officer of a state or federal agency, or a senior executive officer having responsibility for the overall operations of a principal geographic or functional unit of a state or federal agency [ex: regional administrators of EPA].

\*\*\*

*Process*—a method or technique, including recycling, recovering, compacting (but not including compacting that occurs solely within a transportation vehicle or at a non-processing transfer station), composting, incinerating, shredding, baling, recovering resources, pyrolyzing, or any other method or technique that is designed to change the physical, chemical, or biological character or composition of a solid waste to render it safer for transport, reduced in volume, or amenable for recovery, storage, reshipment, or resale. The definition of *process* does not include treatment of wastewaters to meet state or federal wastewater discharge permit limits. Neither does the definition include activities of an industrial generator to simply separate wastes from the manufacturing process.

\*\*\*

*Regulatory Permit*—written authorization promulgated into the solid waste regulations for the construction, installation, modification, operation, closure, or post-closure of a facility used or intended to be used to process or dispose of solid waste in accordance with the Act, these regulations, and specified terms and conditions.

\*\*\*

*Responsible Corporate Officer*—one of the following persons employed by the corporation: president; treasurer; secretary; vice-president in charge of a principal business function; or any other person who performs similar policy or decision-making functions of the corporation; or the manager of one or more manufacturing, production, or operating facilities, provided that the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to ensure long term environmental compliance with environmental laws and regulations, and can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit applications, and the manager has the authority to sign documents assigned or delegated in accordance with corporate procedures. The administrative authority will

assume that these corporate officers have the requisite authority to sign permit applications and certifications unless the corporation has notified the administrative authority to the contrary.

\*\*\*

*Responsible Official*—the person who has the authority to sign applications for permits and certifications of compliance. For corporations, this person shall be a *responsible corporate officer*. For a partnership or sole proprietorship, this person shall be a partner or the proprietor, respectively. For a municipality, state agency, federal agency, or other public agency, this person shall be a ranking elected official or a *principal executive officer* of a state or federal agency.

\*\*\*

*Silty Clay*—soils that meet the group designations of *CL* or *CH* in the Unified Soil Classification System as contained in the American Society for Testing and Materials (ASTM) standard D2487-06e1.

\*\*\*

*Solid Waste*—any garbage, refuse, or sludge from a waste treatment plant, water-supply treatment plant, or air pollution-control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, and construction/demolition debris. *Solid waste* does not include solid or dissolved material in domestic sewage; solid or dissolved materials in irrigation-return flows or industrial discharges that are point sources subject to permits under R.S. 30:2074; source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (68 Stat. 923 et seq.), as amended (42 U.S.C. Section 2011 et seq.); or hazardous waste subject to permits under R.S. 30:2171 et seq.

\*\*\*

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 Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2514, 2609 (November 2000), amended by the Office of Environmental Assessment, LR 31:1576 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1019 (June 2007), LR 34:1023 (June 2008), LR 34:1399 (July 2008), LR 37:1563 (June 2011), LR 37:3233 (November 2011).

#### **§117. Experimental Operations for New Technologies**

A. This Section allows applicants to submit requests allowing for experimental operations for new technology (e.g., use of alternate daily cover) prior to submitting a permit application or modification. No experimental operations for new technologies shall be implemented without prior approval from the administrative authority.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1026 (June 2007), amended LR 37:3234 (November 2011).

### **Chapter 3. Scope and Mandatory Provisions of the Program**

#### **§303. Wastes Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations**

A. The following solid wastes, when processed or disposed of in an environmentally sound manner, are not subject to the permitting requirements or processing or disposal standards of these regulations:

1. - 7. ...

8. agricultural wastes, including manures, that are removed from the site of generation by an individual for his own personal beneficial use on land owned or controlled by the individual. The amount of wastes covered by this exemption shall not exceed 10 tons per year (wet-weight) per individual per use location. To qualify for this exemption records documenting the amount of wastes used for beneficial use on land owned or controlled by the generator shall be maintained. These records shall be kept for a minimum period of two years;

9. ...

10. woodwastes that are beneficially-used in accordance with a Best Management Practice Plan approved in writing by the Department of Agriculture and submitted to the Office of Environmental Services, provided that the generator notifies the Office of Environmental Services of such activity at each site in accordance with LAC 33:VII.401.A. Woodwastes not being properly managed in accordance with the Best Management Practice Plan approved by the Department of Agriculture do not meet this exemption.

11. - 13. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1027 (June 2007), LR 33:2140 (October 2007), LR 37:3235 (November 2011).

#### **§305. Facilities Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations**

A. The following facilities that are operated in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

1. - 8.a. ...

b. the facility shall comply with applicable Louisiana water quality regulations (LAC 33:Part IX); and

c. the facility shall comply with the perimeter barrier, security, and buffer zone requirements in LAC 33:VII.719.B;

9. - 9.d. ...

e. the facility shall comply with applicable Louisiana water quality regulations (LAC 33:Part IX);

10. ...

11. recycling facilities, as described in LAC 33:VII.303.A.3, that receive only source-separated recyclables;

12. hospitals and other health care facilities that store or treat regulated infectious waste generated on-site or that accept waste from off-site wholly- or partly-owned subsidiaries; and

13. transportation vehicles and municipal or parish collection containers that collect and compact solid waste.

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 Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1264 (June 2000), LR 26:2515, 2609 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 33:1028 (June 2007), LR 33:2140 (October 2007), LR 37:3235 (November 2011).

#### **§315. Mandatory Provisions**

A. ...

B. Storage of Wastes. No solid waste shall be stored or allowed to be stored in a manner that may cause a nuisance or health hazard or detriment to the environment as determined by the administrative authority. Unless authorized or approved by the administrative authority, no solid waste shall be stored or allowed to be stored at an off-site location unless such off-site location is an authorized transfer station or collection, processing, or disposal facility. After October 20, 2011 solid wastes may not be stored on-site for greater than one year, without approval from the Office of Environmental Compliance. The facility shall maintain records indicating the time frame that waste has been stored.

C. - O. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:1675 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1030 (June 2007), LR 34:1400 (July 2008), LR 36:1240 (June 2010), LR 37:3235 (November 2011).

### **Chapter 4. Administration, Classifications, and Inspection Procedures for Solid Waste Management Systems**

#### **§407. Inspection Types and Procedures**

A. Classification Inspection. A classification inspection is required for all facilities not previously classified, and each facility's initial classification is based on this inspection. It is performed after the department receives notification of operations (LAC 33:VII.401.A).

B. ...

C. Initial Start-Up Inspection

1. Upon issuance of a permit or modification requiring upgrades to an existing unit, or construction of a newly permitted unit, a start up inspection may be made after the permit holder submits a construction certification to the Office of Environmental Services, signed by a professional engineer licensed in the state of Louisiana, certifying that the

upgrade to an existing unit, or construction of a newly permitted unit or a discrete portion thereof as identified in a construction schedule included in the permit, is constructed and/or upgraded in accordance with the permit or modification, and as specified in the permit or modification application.

2. Upon renewal of an existing permit where no physical changes are required, no construction certification shall be required to be submitted, and no start-up inspection shall be initiated. The permit holder may continue use of the unit(s) upon the effective date of the renewal permit.

3. If the administrative authority determines a start-up inspection is required pursuant to Paragraph 1 of this Subsection, the start-up inspection shall be initiated within 15 working days of receipt of certification by the Office of Environmental Services unless a longer time period is set by mutual agreement.

4. Within 15 working days after a new, existing, or modified facility has undergone an initial start-up inspection, or within 30 days of receipt of the construction certification, the administrative authority shall either issue an approval of the construction and/or upgrade or a notice of deficiency to the permittee, unless a longer time period is set by mutual agreement.

D. Construction Inspections. At least 10 days prior to commencing construction of a liner, leak-detection system, leachate-collection system, or monitoring well at a Type I or Type II facility, the permit holder shall notify the Office of Environmental Services, in writing, of the date on which construction will begin, in order to allow a representative of the department the opportunity to witness the construction. Written notification under this Subsection is not required if the construction notification is included in a report required by LAC 33:VII.527.

E. Closure Inspections. Closure inspections will be conducted within 30 days after the Office of Environmental Services has received written notice from the permit holder that closure requirements have been met in accordance with the approved closure permit or closure plan for those facilities that began closure activities in accordance with an approved closure plan prior to October 20, 2011, and the permit holder has submitted a request for a closure inspection. Closure inspections shall be conducted before backfilling of a facility takes place. The administrative authority reserves the right to determine if a facility has been closed properly.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2517 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2487 (October 2005), LR 33:1032 (June 2007), LR 33:2142 (October 2007), LR 37:3235 (November 2011).

## **Chapter 5. Solid Waste Management System**

### **Subchapter A. General Standards for Nonpermitted Facilities**

#### **§501. Standards Governing Industrial Solid Waste Generators**

##### **A. Annual Reports**

1. Generators of industrial solid waste shall submit annual reports to the Office of Management and Finance listing the types and quantities, in wet-weight tons per year, of industrial solid waste they have disposed of off-site. This requirement does not apply to those generators who are also permit holders required to submit annual certifications of compliance in accordance with LAC 33:VII.525.

A.2. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1033 (June 2007), LR 33:2142 (October 2007), LR 37:3236 (November 2011).

#### **§503. Standards Governing Solid Waste Accumulation and Storage**

##### **A. Solid Waste Accumulation**

1. No solid waste shall be stored or allowed to be stored long enough to cause a nuisance, health hazard, or detriment to the environment as determined by the administrative authority, and after October 20, 2011, no solid waste shall be stored on-site for greater than one year without approval from the Office of Environmental Compliance. The facility shall maintain records indicating the time frame during which waste has been stored.

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

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 Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1033 (June 2007), LR 34:613 (April 2008), LR 37:3236 (November 2011).

#### **§507. Standards Governing Collection Facilities for Solid Waste**

A. - C.4. ...

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

E. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2609 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1034 (June 2007), LR 37:3236 (November 2011).

### **Subchapter B. Permit Administration**

#### **§509. Permit System**

A. - B.1.a.i. ...

ii. to allow operations to continue at an existing facility while a closure plan or closure permit application is



being processed or while a facility is being closed in accordance with an approved closure plan; or

iii. ...

b. Temporary permits that may have been issued in the form of administrative orders, compliance orders to upgrade, orders to upgrade, compliance orders to close, orders to close, and settlement agreements prior to February 20, 1993, may remain in effect until otherwise determined by the administrative authority.

c. Temporary permit holders who do not have financial assurance meeting the requirements of LAC 33:VII.Chapter 13 shall submit financial assurance meeting the requirements of LAC 33:VII.Chapter 13 within 120 days of October 20, 2011.

2. Standard Permit. Standard permits may be issued by the administrative authority to applicants for solid waste processing and/or disposal facilities that have successfully completed the standard permit application process for a site specific permit.

3. General Permit. General permits may be issued to facilities with operations that are similar in nature and shall provide conditions that each facility that is authorized to operate under the general permit shall follow. Issuance of a general permit shall follow the procedures of a standard permit regarding draft decisions, public notice, and final decisions.

4. Regulatory Permit. Regulatory permits may be issued by the administrative authority when it is determined to be appropriate considering the type of operations or facilities that would be covered. Regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019.

5. Closure Permit. Closure permits may be issued to allow closure activities to occur in accordance with an approved closure plan.

6. All permits, regardless of type, issued on or after February 20, 1993, shall correspond to the facility categories set forth in LAC 33:VII.405.A (*Type I, Type I-A, Type II, Type II-A, and Type III*).

C. Existing Facilities Not Previously Classified or Not Presently Operating Under a Standard Permit

1. Only those existing facilities that the administrative authority classifies for upgrading may apply for a standard permit. The person notifying the Office of Environmental Services shall be issued a temporary permit and may continue operations in accordance with an interim operational plan, pending a decision on the standard permit application.

2. A facility classified for closure shall be issued a temporary permit. That permit may allow operations to continue in accordance with an interim operational plan until closure activities are accomplished and may require that closure and/or post-closure activities be conducted in accordance with an approved closure plan or permit.

D. Duration of Permit

1. Temporary permits are issued for a period not to exceed three years.

2. Standard, closure, and general permits issued to facilities other than landfills are issued for a period not to exceed 10 years, and may be issued for a period of less than 10 years.

a. Processing and/or disposal facilities with an effective standard permit shall submit to the Office of Environmental Services a new permit application, following the application process in LAC 33:VII.513 and 519, at least 365 calendar days before the expiration date of the standard permit, unless written permission for later filing is granted by the administrative authority. If the renewal application is submitted on or before the deadline above, and the administrative authority does not issue a final decision on the renewal application on or before the expiration date of the standard permit, the standard permit shall remain in effect until the administrative authority issues a final decision.

b. For permits with expiration dates greater than ten years, upon expiration, the department may, in accordance with rules and regulations, extend or reissue a permit for another time period of up to ten years, or up to 20 years for landfill facilities.

3. Standard permits for landfills may be issued for a time period not to exceed 20 years. The administrative authority may issue a permit for a landfill for a lesser time period when the administrative authority determines a lesser time period is warranted based on factors such as the applicant's compliance history, other non-compliance issues, or capacity.

E. Public Hearings

1. - 4. ...

5. Public Opportunity to Request a Hearing. Any person may, within 30 days after the date of publication of the draft decision in a newspaper notice (LAC 33:VII.513.G.3), request that the administrative authority consider whether a public hearing is necessary. If the administrative authority determines that the requests warrant it, a public hearing will be scheduled. If the administrative authority determines that the requests do not raise genuine and pertinent issues, the Office of Environmental Services shall send the person(s) requesting the hearing written notification of the determination. The request for a hearing shall be in writing and shall contain the name and affiliation of the person making the request and the comments in support of or in objection to the issuance of a permit.

6. Public Notice of a Public Hearing. If the administrative authority determines that a hearing is necessary, notices shall be published at least 20 days before a fact-finding hearing in the official journal of the state and in a major local newspaper of general circulation in the area where the facility is located. The notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. Those persons on the Office of Environmental Services mailing list for hearings shall be mailed notice of the hearing at least 20 days before a public hearing. A notice shall also be published at least 20 days before a public hearing in the departmental bulletin, if available, or on the department's internet site in the public notices section.

7. Review of Comments Following a Public Hearing. Comments received by the Office of Environmental Services within 30 days after the date of a public hearing shall be reviewed by the Office of Environmental Services.

F. Other Requirements

1. The applicant may be required to obtain additional permits from other local state and federal agencies. Typical permits that may be needed include, but are not limited to, the following:

1.a. - 3. ...

G. Suspension, Revocation, Modification, or Termination of Permit. The administrative authority may review a permit at any time. After review of a permit, the administrative authority may, for cause, suspend, revoke, or modify a permit in whole or in part in accordance with the procedures outlined in the Administrative Procedure Act. If a permit holder requests termination of a permit, the administrative authority may terminate the permit with or without a review of the permit. Public notice is not required for termination of permits when the permit is terminated at the request of the permit holder.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2518, 2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1035 (June 2007), LR 33:2143 (October 2007), LR 37:3236 (November 2011).

**§513. Permit Process for Existing Facilities and for Proposed Facilities**

A. Applicability. Solid waste permit applications and application processing shall be subject to the following requirements.

1. Permit holders who have been issued a final permit or modification prior to October 20, 2011, and have been issued an order to commence prior to October 20, 2011, shall follow the existing permit or modification. Any changes requested to the existing permit shall follow the procedures outlined in Subsections B-K of this Section.

2.a. Permit holders who have been issued a final permit or modification prior to October 20, 2011, and have not been issued an order to commence prior to October 20, 2011, shall submit a construction certification to the Office of Environmental Services, signed by a professional engineer, licensed in the state of Louisiana, after completion of any necessary construction or upgrades, that the facility has been constructed or upgraded in accordance with the permit. Unless a longer time period is set by mutual agreement, within 15 working days of receipt of construction certification by the Office of Environmental Services, the administrative authority shall conduct a start-up inspection. Within 15 working days after a new, existing, or modified facility has undergone an initial start-up inspection, the administrative authority shall either issue an order authorizing commencement of operations or a written notice of deficiency to the permittee, unless a longer time period is set by mutual agreement.

b. Permit holders who have been issued an initial final permit prior to October 20, 2011, and have not been

issued an order to commence prior to October 20, 2011, shall provide written confirmation from the appropriate municipal or parish governing authority where the facility will be located, dated within one 180 days prior to receiving an order to commence, indicating that the facility is or will be in compliance with all existing local zoning and land use restrictions.

3. Applicants for solid waste permits or major modifications who submitted an application prior to October 20, 2011, and have not yet been issued a final permit shall not be required to submit a new application form, unless required by the administrative authority. However, those applicants shall be required to comply with the requirements of LAC 33:VII.513.B.1 and 2, as applicable.

4. All solid waste permit applications and modification applications submitted after October 20, 2011, shall follow the procedures of LAC 33:VII.513.B-K, as applicable.

B. Pre-Application Requirements. All prospective applicants for solid waste permits, except for those applicants exempted under Paragraphs 9-12 of this Subsection, shall comply with the following requirements prior to submitting an application for a solid waste permit.

1. The prospective applicant shall conduct a capacity evaluation regarding the need for the type of facility to be requested in the location proposed. This capacity evaluation shall consider existing capacity within the proposed service area of the facility. The prospective applicant shall forward the results of the evaluation to the administrative authority for review. The administrative authority shall respond to the evaluation within 90 days of submittal and the response shall indicate the administrative authority's concurrence or non-concurrence.

2. The prospective applicant shall obtain written confirmation from the appropriate municipal or parish governing authority where the facility is proposed to be located indicating that the facility is or will be in compliance with all existing local zoning and land use restrictions. The written confirmation may be submitted on a form provided in the application. The prospective applicant shall forward a copy of the written confirmation to the administrative authority for review. If the municipal or parish governing authority fails to provide to the applicant the requested written confirmation within 90 days of the request by the applicant, the applicant shall provide all information submitted to the municipal or parish governing authority regarding the request to the administrative authority and may submit the permit application without the written confirmation. Failure to include the written confirmation with applications submitted after the 90 day time frame above shall not constitute grounds for the application to be deemed administratively incomplete in accordance with LAC 33:I.1505. The administrative authority shall request that the municipal or parish governing authority provide a response within 60 days. If the municipal or parish governing authority fails to provide a response to the department within the 60 days, the administrative authority shall consider the applicant in compliance with all existing local zoning and land use restrictions.

3. - 5. ...

6. Pre-Application Public Notice

a. Prospective applicants shall publish a notice of intent to submit an application for a permit. This notice shall be published within 45 days prior to submission of the application to the Office of Environmental Services. This notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state shall be the only public notice required.

b. The public notice shall be published in accordance with the form provided in LAC 33:VII.3001.Appendix A.

#### 7. Post-Application Public Notice

a. All applicants shall publish a notice of application submittal within 45 days after submitting the application to the Office of Environmental Services. This public notice shall be published one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the legal or public notices section of the official journal of the state shall be the only public notice required.

b. The public notice shall be published in accordance with the form provided in LAC 33:VII.3003.Appendix B.

8. All prospective applicants are encouraged to meet with representatives of the Waste Permits Division prior to the preparation of a solid waste permit application to inform the department of the plans for the facility.

9. Applicants who are Type I only and who also do not propose to accept waste from off-site, other than off-site waste from affiliated persons, such as the applicant or any person controlling, controlled by, or under common control with, the applicant, are exempt from the requirements of LAC 33VII.513.A.2.b and Paragraphs 1-2 of this Subsection.

10. Applicants for renewal or major modification of an existing permit are exempt from the requirements of Paragraphs 1-2 of this Subsection, provided that the application does not include changes that would constitute a physical expansion of the area(s) in which solid wastes are disposed beyond the facility's existing boundaries as set forth in the facility's existing permit.

11. Applicants for closure permits, applicants seeking authorization under a general permit, and minor modification requests are exempt from Paragraphs 1-5 of this Subsection.

12. Applicants whose types are I-A only or II-A only, or both I and I-A or both I-A and II-A are exempt from the requirements of Paragraphs 1 and 2 of this Subsection.

#### C. Permit Application Requirements

1. Any person who generates, transports, or stores solid waste, and is not issued a permit, but is under the jurisdiction of the department, shall comply with the applicable provisions of these regulations.

#### 2. Submittal of Permit Applications

a. Any applicant for a standard permit for existing or proposed processing or disposal facilities shall complete all parts of a permit application as described in LAC 33:VII.519, and submit three paper copies to the Office of Environmental Services. All applicants shall also submit three electronic copies of the application, in a format acceptable to the department, with the submittal of the paper copies. All attachments shall be marked with appropriate tabs. In lieu of submitting three paper and three electronic copies of the permit application, the applicant may submit the permit application electronically via the internet when the department's internet site allows for such submittals.

b. Any applicant seeking authorization under a general permit shall follow the application/notice of intent provisions specified in the general permit.

c. Any applicant for a closure permit shall file an application for a closure permit. The closure permit application shall provide the information specified in LAC 33:VII.515.

d. Each application for which a permit application fee is prescribed shall be accompanied by a remittance in the full amount of the appropriate fee. No application shall be accepted or processed prior to payment of the full amount specified.

e. A completed separate standard permit application for each existing facility shall be submitted to the Office of Environmental Services within 180 days after issuance of a temporary permit.

f. All applications submitted shall be available for public review via the department's electronic document management system as soon as practicable, subject to the confidentiality provisions of LAC 33:I.Chapter 5.

D. Notices to Parish Governing Authorities. As provided in R.S. 30:2022, upon receipt of a permit application the Office of Environmental Services shall provide written notice on the subject matter to the parish governing authority, which shall promptly notify each parish municipality affected by the application.

#### E. Permit Application Review and Evaluation

1. LAC 33:VII.Chapters 5, 7, 8, 13 and 15 establish the evaluation criteria used by the administrative authority.

2. - 3. ...

F. Standard Permit Applications Deemed Unacceptable or Deficient

1. - 2. ...

3. The supplementary information as referenced in Paragraph F.2 of this Section shall address all deficiencies and/or show significant progression in addressing all outstanding deficiencies, or the application may be denied.

#### G. Draft Permit Decision

1. Once an application is deemed technically complete, the administrative authority shall prepare a draft permit decision to issue or deny the requested permit. If a draft permit is prepared, the draft permit shall contain the following information:

a. all conditions proposed for a final permit under LAC 33:VII.Subpart 1; and

b. any compliance schedules proposed for the facility.

2. Fact Sheet. For all draft permit decisions, including draft denials, the administrative authority shall prepare a fact

sheet describing the department's reasoning for the issuance of the draft permit decision. The fact sheet shall contain:

- a. a brief description of the facility and the activity which is the subject of the draft permit decision;
- b. the type and quantity of wastes which are proposed to be or are being processed or disposed;
- c. a brief summary of the justification for the draft permit conditions (not applicable to draft denials), including references to any applicable statutes or regulations;
- d. a description of the procedures for reaching a final decision including:
  - i. a description of the public comment period under LAC 33:VII.513.G.3 and the address where comments will be received; and
  - ii. procedures for requesting a hearing;
- e. the name and telephone number of a person to contact for additional information; and
- f. any additional information, as necessary.

3. **Public Notice.** The Office of Environmental Services shall publish a notice of the draft permit decision one time as a single classified advertisement in the legal or public notices section of the official journal of the state and a major local newspaper of general circulation in the area where the facility is located. If the facility is in the same parish or area as the official journal of the state, a single classified advertisement in the official journal of the state shall be the only public notice required. The public notices shall solicit comment from interested individuals and groups. Comments received by the administrative authority within the timeframe specified in the public notice shall be reviewed by the Office of Environmental Services prior to the preparation of a final decision. The costs of publication shall be borne by the applicant. The applicant shall furnish the contact information (including name and/or title, address, and telephone number) for the person who shall be responsible for receiving the invoice from the newspaper(s). Proof of payment for the public notice shall be provided to the administrative authority if requested.

4. A copy of the draft permit decision shall be sent to the parish library in the parish where the facility is located for public review.

5. A copy of the draft permit decision shall be sent to the appropriate regional office and shall be made available for public review.

6. Closure permits based on closure plans or applications, if not received as part of a permit application for a standard permit, shall not follow the draft permit decision process. Once a closure plan or application is deemed adequate, the administrative authority shall issue a closure permit.

#### H. Issuance of a Final Permit Decision

1. The administrative authority shall issue a standard permit or a general permit, or shall issue a standard permit denial, including reasons for the denial, after the public notice period specified in Paragraph G.3 of this Section has ended.

2. A closure permit may be issued to allow closure activities to be accomplished at a facility that has been issued a standard permit denial but has previously accepted waste under a prior permit or an order.

3. The administrative authority may issue authorization to operate under the conditions of a general

permit in lieu of a standard permit, provided the applicant meets the requirements to operate under the general permit.

I. **Public Notice of Final Permit Decision for Standard or General Permit.** No later than 20 days following the issuance of a final permit decision for a standard or general permit, the administrative authority shall publish a notice of the final permit decision on the department's internet site, in the public notices section. This does not apply to authorizations to operate under a general or regulatory permit. No notice will be sent, except to those persons who commented on the draft permit decision and to those persons who have requested to be provided written notice.

J. As a permit condition, the department shall establish a time frame for the facility to submit any necessary construction certifications required by the administrative authority.

K. All necessary construction shall begin within 18 months of the effective date of the permit, unless a longer term is specified in the permit. If a permittee fails to begin construction within the 18 month period or as otherwise specified in the permit, the permittee shall repeat performance of the requirements listed in Subsection B (pre-application requirements) of this Section. The performance of these requirements shall be repeated by the permittee every 18 months until construction begins.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2519 (November 2000), amended by the Office of Environmental Assessment, LR 30:2032 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2488 (October 2005), LR 33:1037 (June 2007), LR 33:2143 (October 2007), LR 37:1563 (June 2011), LR 37:3238 (November 2011).

### **Subchapter C. Permit System for Facilities Classified for Upgrade or Closure**

#### **§515. Permit Process for Existing Facilities Classified for Closure**

A. ...

##### **B. Submittal of Closure Plans**

1. Permit holders for facilities classified for closure shall submit to the Office of Environmental Services three paper copies and three electronic copies in a format acceptable to the department, of a closure plan within 60 days after issuance of the temporary permit for the facility. All attachments shall be marked with appropriate tabs.

2. The following Sections of the regulations shall be addressed and incorporated in the closure plan for all solid waste processing and disposal facilities. All responses and exhibits shall be identified in the following sequence to facilitate the evaluation. All applicable Sections of LAC 33:VII.Chapters 5, 7, and 8 shall be addressed and incorporated into the closure plan:

a. LAC 33:VII.519.B;

b. - c. ...

d. those portions of LAC 33:VII.Chapter 7 pertaining to facility characteristics;

e. LAC 33:VII.519.B.2, Facility Surface Hydrology;

f. LAC 33:VII.801.A, General Facility Geology (only required for Type I and II facilities that have not undergone clean closure);

g. LAC 33:VII.803, Subsurface Characterization (only required for Type I and II facilities that have not undergone clean closure);

h. LAC 33:VII.519.B.10, Facility Groundwater Monitoring (only required for Type I and II facilities that have not undergone clean closure);

i. LAC 33:VII.519.B.3, Facility Plans and Specifications (only required for Type I and II facilities with on-site closure and with a potential to produce gases);

j. the types (including chemical and physical characteristics) and sources of waste processed or disposed of at the facility;

k. LAC 33:VII.519.B.6, Facility Closure;

l. LAC 33:VII.519.B.7.a, Facility Post-Closure;

m. LAC 33:VII.519.B.7.b, Facility Post-Closure (only required for Type I and II facilities that have not undergone clean closure);

n. the name of the person who currently owns the land;

o. LAC 33:VII.519.B.8, Financial Responsibility; and

p. a detailed implementation schedule for closure of the facility with built-in flexibility to coincide with the date of approval of the closure plan.

3. ...

C. Closure Plans Determined Unacceptable or Deficient

1. - 2. ...

D. Closure Plans Deemed Technically Complete. Closure plans that have been deemed technically complete shall be approved by issuance of a closure permit. The facility shall comply with the closure permit for all closure activities performed for closing the facility. If the facility received approval of a closure plan prior to October 20, 2011, the facility shall comply with the approved closure plan.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2489 (October 2005), LR 33:1038 (June 2007), LR 33:2144 (October 2007), LR 37:3240 (November 2011).

## **§517. Modifications of Permits and Other Authorizations to Operate**

### **A. Modification Requests**

1. The permit holder shall submit a permit modification request to the Office of Environmental Services, for any changes in a facility or deviation from a permit. All permit modification requests shall detail the proposed modifications and shall include an assessment of the effects of the modification on the environment and/or the operation. Modification details shall include, but not be limited to, a summary detailing the modification request and all appropriate drawings, narratives, etc., which shall illustrate and describe the originally-permitted representations and the proposed modifications thereto. New language requested in the permit narrative and existing

language requested to be deleted from the permit shall be identified therein.

a. Modification requests shall be submitted using the appropriate permit application form. Only those sections that are proposed for modification shall be completed. The administrative authority may request further information so that a proper determination may be made. Three paper copies and three electronic copies, in a format acceptable to the department, of all modification requests shall be provided to the Office of Environmental Services. The modification request shall incorporate, in the appropriate sections, all required plans and narratives and shall include appropriate tabbing, if applicable, for all attachments. A facility seeking to modify its permit to include changes that constitute a physical expansion of the area(s) in which solid wastes are disposed beyond the facility's existing boundaries as set forth in the facility's existing permit shall follow the pre-application requirements listed at LAC 33:VII.513.B.

b. ...

2. All proposed changes in ownership shall comply with the provisions specified in LAC 33:I.Chapter 19.

3. All major modification requests shall address the additional supplemental information required pursuant to LAC 33:VII.519.B.9 in relation to the proposed permit modification activity.

### **B. Public Notice of Modifications**

1. Major modifications require public notice after a draft permit decision is prepared. Modifications to a permit that require public notice include, but are not limited to, the following:

a. - d. ...

e. an extension of the operating hours or days of operation;

f. a change to the facility that may have an impact on traffic patterns;

g. a reduction in the number of groundwater sampling parameters or the number of groundwater monitoring wells;

h. a lateral or vertical expansion of the permitted area(s) for waste disposal, except for vertical expansion that would result in no net increase of in-place volume; or

i. other changes in the permit that tend to make the permit requirements less stringent.

2. Once a permit modification that requires public notice has been determined by the Office of Environmental Services to be technically complete, the department shall prepare a draft permit decision following the procedures of LAC 33:VII.513.G.

3. Mandatory modifications are considered to be enhancements and will require neither public notice nor public hearing.

C. No modification shall be instituted without the written approval of the administrative authority as follows.

1. For major modifications, the administrative authority shall issue a final permit decision after the public notice period required in LAC 33:VII.517.B.2. Final permit decisions shall follow the procedures outlined in LAC 33:VII.513.H and I.

2. For minor modifications, the administrative authority shall issue a final permit decision after review of the requested modification.

D. Operation of a modified construction feature or unit of a standard permitted facility may commence after the provisions of LAC 33:VII.407.C are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2520 (November 2000), amended by the Office of Environmental Assessment, LR 30:2033 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2430, 2490 (October 2005), LR 33:1039 (June 2007), LR 33:2145 (October 2007), LR 37:3241 (November 2011).

#### Subchapter D. Permit Application

##### §519. Permit Application Form(s)

A. The applicant shall complete a standardized permit application Form obtained from the Office of Environmental Services or the department's website. The form(s) to be used shall be based on the type of facility involved. If the application is for multiple facility types or unit types, the applicant shall combine the application forms into one application with common attachments. The application shall be completed following the information provided in the application guidance document, if applicable. Application form requirements shall be based on all Sections of LAC 33:VII as applicable.

#### B. Application Contents

1. General Facility Information. The following information is required from all applicants:

- a. the name of the applicant (prospective permit holder) applying for a permit;
- b. the facility name;
- c. a description of the location of the facility (identify by street and number or by intersection of roads, or by mileage and direction from an intersection);
- d. the geographic location (section, township, range, and parish where the facility is located, and the coordinates, as defined by the longitude and latitude to the second) of the center point of the facility;
- e. the mailing address of the applicant;
- f. the contact person for the applicant (the position or title of the contact person is acceptable);
- g. the telephone number of the contact person;
- h. the type and purpose of the operation (check each applicable box);
- i. the status of the facility (if leased, state the number of years of the lease and provide a copy of the lease agreement);
- j. the operational status of the facility;
- k. the total site acreage and the amount of acreage that will be used for processing and/or disposal;
- l. a list of all environmental permits that relate directly to the facility represented in this application, including:
  - i. those permits which the applicant has been issued with dates of issuance; and
  - ii. those permits for which the applicant has applied or intends to apply;
- m. the zoning of the facility that exists at the time of the submittal of the permit application. (Note the zone classification and zoning authority, and include

documentation stating that the proposed use does not violate existing land-use requirements. Written confirmation required by LAC 33:VII.513.B.2 shall be sufficient to satisfy the documentation requirement.);

n. the types of waste to be processed or disposed by the facility, maximum quantities (wet tons/week and wet tons/year) of waste to be processed or disposed by the facility, and sources of waste to be processed or disposed by the facility. The applicant shall provide a breakdown (by percent) of the following:

- i. all waste processed or disposed that is to be generated on-site;
- ii. all waste processed or disposed that is to be received from off-site sources located within Louisiana; and
- iii. all waste processed or disposed that is to be received from off-site sources located outside of Louisiana;
- o. the specific geographic area(s) to be serviced by the solid waste facility;
- p. proof of publication of the notice regarding the submittal of the permit application as required in LAC 33:VII.513.B.6;
- q. the signature, typed name, and title of the *responsible official* as defined in LAC 33:VII.115 authorized to sign the application;
- r. proof of notification to the nearest airport and the Federal Aviation Administration; and
- s. for previously permitted facilities, a brief history of the permit actions that have occurred at the site, including permits, modifications, and closure activities.

2. The following information regarding facility surface hydrology is required for all facilities:

- a. a description of the method to be used to prevent surface drainage through the operating areas of the facility;
- b. a description of the facility runoff/run-on collection system;
- c. the rainfall amount from a 24-hour/25-year storm event;
- d. the location of aquifer recharge areas in the site or within 1,000 feet of the site perimeter, along with a description of the measures planned to protect those areas from the adverse impact of operations at the facility; and
- e. if the facility is located in a flood plain, a plan to ensure that the facility does not restrict the flow of the 100-year base flood or significantly reduce the temporary water-storage capacity of the flood plain, and documentation indicating that the design of the facility is such that the flooding does not affect the integrity of the facility or result in the washout of solid waste.

3. The following information regarding facility plans and specifications is required for all facilities, unless otherwise indicated:

a. Certification. The person who prepared the permit application shall provide the following certification:

"I certify under penalty of law that I have personally examined and I am familiar with the information submitted in this permit application and that the facility as described in this permit application meets the requirements of LAC 33:VII.Subpart 1. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

b. Geotechnical field tests and laboratory tests shall be conducted in compliance with LAC 33:I.Subpart 3 and according to the standards of the American Society for Testing and Materials (ASTM) or the EPA or other

applicable standards approved by the administrative authority. The results of these tests may be used for modeling and analysis purposes.

c. The following information is required for Type I and II facilities only:

i. detailed plan-view drawings showing original contours, proposed elevations of the base of units prior to installation of the liner system, and proposed final contours (e.g., maximum height);

ii. detailed drawings of slopes, levees, and other pertinent features;

iii. the type of material and its source for levee construction. Calculations shall be performed to indicate the volume of material required for levee construction;

iv. representative cross sections showing original and final grades, drainage, the location and type of liner, and other pertinent information;

v. a description of the liner system, which shall include calculations of anticipated leachate volumes, rationales for particular designs of such systems, and drawings; and

vi. a description of the leachate collection and removal system, which shall include calculations of anticipated leachate volumes, rationales for particular designs of such systems, and drawings.

d. The following information is required for Type I, II, and III landfills only:

i. approximate dimensions of daily fill and cover; and

ii. the type of cover material and its source for daily, interim, and final cover. Calculations shall be performed to indicate the volume of material required for daily, interim, and final cover.

4. The following information regarding facility administrative procedures is required for all facilities as indicated.

a. The following information is required for all facilities:

i. a description of the recordkeeping system, including types of records to be kept, and the use of records by management to control operations as required;

ii. an estimate of the minimum personnel, listed by general job classification, required to operate the facility;

iii. the maximum days of operation per week and hours per facility operating day (maximum hours of operation within a 24-hour period); and

iv. an annual report or certification of compliance submitted to the administrative authority.

b. Type II and Type III facilities shall include the number of certified facility operators determined and certified by the Louisiana Solid Waste Operator Certification and Training Program Board (R.S. 37:3151 et seq. and LAC 46:Part XXIII).

5. The following information regarding facility operational plans is required for all facilities as indicated.

a. The following information is required for all facilities:

i. types of waste (including chemical, physical, and biological characteristics of industrial wastes generated on-site), maximum quantities of wastes per year, and sources of waste to be processed or disposed of at the facility;

ii. waste-handling procedures from entry to final disposition, which could include shipment of recovered materials to a user;

iii. minimum equipment to be furnished at the facility;

iv. plan to segregate wastes, if applicable;

v. procedures planned in case of breakdowns, inclement weather, and other abnormal conditions (including detailed plans for wet-weather access and operations);

vi. procedures, equipment, and contingency plans for protecting employees and the general public from accidents, fires, explosions, etc., and provisions for emergency response and care, should an accident occur (including proximity to a hospital, fire and emergency services, and training programs); and

vii. provisions for controlling vectors, dust, litter, and odors;

viii. a comprehensive operational plan describing the total operation, including but not limited to, inspection of incoming waste to ensure that only permitted wastes are accepted (Type II landfills shall provide a plan for random inspection of incoming waste loads to ensure that hazardous wastes or Toxic Substances Control Act (TSCA) regulated PCB wastes are not disposed of in the facility.); traffic control; support facilities; equipment operation; personnel involvement; and day-to-day activities. A quality-assurance/quality-control (QA/QC) plan shall be provided for facilities receiving industrial waste; domestic-sewage sludge; incinerator ash; asbestos-containing waste; nonhazardous petroleum-contaminated media; and debris generated from underground storage tanks (UST), corrective action, or other special wastes as determined by the administrative authority. The QA/QC plan shall include, but shall not be limited to, the necessary methodologies; analytical personnel; preacceptance and delivery restrictions; handling procedures; and appropriate responsibilities of the generator, transporter, processor, and disposer. The QA/QC plan shall ensure that only permitted, nonhazardous wastes are accepted;

ix. salvaging procedures and control, if applicable;

x. scavenging control; and

xi. a comprehensive air monitoring plan for facilities receiving waste with a potential to produce methane gases.

b. The following information is required for Type I and II landfills only.

i. Items to be submitted, regardless of land use, include:

(a). a detailed analysis of waste, including but not limited to, pH, phosphorus, nitrogen, potassium, sodium, calcium, magnesium, sodium-adsorption ratio, and total metals (as listed in LAC 33:VII.715.D.3.b);

(b). soil classification, cation-exchange capacity, organic matter, content in soil, soil pH, nitrogen, phosphorus, metals (as listed in LAC 33:VII.715.D.3.b), salts, sodium, calcium, magnesium, sodium-adsorption ratio, and PCB concentrations of the treatment zone; and

(c). annual application rate (dry tons per acre) and weekly hydraulic loading (inches per acre).

ii. Items to be submitted in order for landfills to be used for food-chain cropland include:

- (a). a description of the pathogen-reduction method for septage, domestic sewage sludges, and other sludges subject to pathogen production;
- (b). crops to be grown and the dates for planting;
- (c). PCB concentrations in waste;
- (d). annual application rates of cadmium and PCBs; and
- (e). cumulative applications of cadmium and PCBs.

iii. Items to be submitted for landfarms to be used for non-food-chain purposes include:

- (a). a description of the pathogen-reduction method for septage, domestic sewage sludges, and other sludges subject to pathogen production; and
- (b). a description of control of public and livestock access.

c. The following information is required for Type I-A and II-A incinerator waste-handling facilities and refuse-derived energy facilities only:

- i. a description of the method used to handle process waters and other water discharges that are subject to NPDES/LPDES permit and state water discharge permit requirements and regulations; and
- ii. a plan for the disposal and periodic testing of ash. (All ash and residue shall be disposed of in a permitted facility).

d. The following information is required for Type I-A and II-A refuse-derived fuel facilities and Type III separation and composting facilities only:

- i. a description of the testing to be performed on the fuel or compost; and
- ii. a description of the uses for and the types of fuel/compost to be produced.

e. Type I-A and II-A refuse-derived fuel facilities and Type III separation and composting facilities shall include a description of marketing procedures and control.

6. The following information regarding facility closure is required for all facilities as indicated.

a. The closure plan for all facilities shall include the following:

- i. the date of final closure;
- ii. the method to be used and steps necessary for closing the facility; and
- iii. an itemized cost of closure of the facility, based on the estimated cost of hiring a third party to close the facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive.

b. The closure plan for all Type I and II landfills and surface impoundments shall include the following:

- i. a description of the final cover and the methods and procedures used to install the cover;
- ii. an estimate of the largest area of the facility ever requiring a final cover at any time during the active life;
- iii. an estimate of the maximum inventory of solid waste ever on-site over the active life of the facility;
- iv. a schedule for completing all activities necessary for closure.

c. The closure plan for all Type I and II facilities and Type III woodwaste and construction/demolition debris facilities shall include the following:

- i. the sequence of final closure of each unit of the facility, as applicable;
- ii. a drawing showing final contours of the facility; and
- iii. a copy of the document that will be filed upon closure of the facility with the official parish recordkeeper indicating the location and use of the property for solid waste disposal, unless the closure plan specifies a clean closure.

7. The following information regarding facility post-closure is required for all facilities as indicated.

a. The post-closure plan for all facilities shall include the following:

- i. discussion of the long-term use of the facility after closure, as anticipated; and
- ii. an itemized cost of conducting post-closure of the facility, based on the estimated cost of hiring a third party to conduct post-closure activities in accordance with the closure plan.

b. The post-closure plan for Type I and II facilities shall include the following:

- i. the method for conducting post-closure activities, including a description of the monitoring and maintenance activities and the frequency at which they will be performed;
- ii. the method for abandonment of monitoring systems, leachate collection systems, gas-collection systems, etc.;
- iii. measures planned to ensure public safety, including access control and gas control; and,
- iv. a description of the planned uses of the facility during the post-closure period.

8. Documentation of financial responsibility meeting the requirements of LAC 33:VII.Chapter 13 shall be included for all facilities. The following shall be included in the documentation:

a. the name and address of the person who currently owns the land and the name and address of the person who will own the land if the permit is granted (if different from the permit holder, provide a copy of the lease or document which evidences the permit holder's authority to occupy the property); or

b. the name of the agency or other public body that is requesting the permit, or if the agency is a public corporation, its published annual report, or if otherwise, the names of the principal owners, stockholders, general partners, or officers;

c. existing facilities shall provide evidence of a financial assurance mechanism for closure and/or post-closure care and corrective action for known releases when needed. Proposed facilities shall acknowledge they will be required to obtain financial assurance in accordance with LAC 33:VII.1303.A.2.

9. Information regarding facility site assessments is required for all facilities as indicated.

a. The following information is required for all solid waste processing and disposal facilities. All responses and exhibits shall be identified in the following sequence to facilitate the evaluation:

- i. a discussion demonstrating that the potential and real adverse environmental effects of the facility have been avoided to the maximum extent possible;



ii. a cost-benefit analysis demonstrating that the social and economic benefits of the facility outweigh the environmental-impact costs;

iii. a discussion and description of possible alternative projects that would offer more protection to the environment without unduly curtailing nonenvironmental benefits;

iv. a discussion of possible alternative sites that would offer more protection to the environment without unduly curtailing nonenvironmental benefits; and

v. a discussion and description of the mitigating measures which would offer more protection to the environment than the facility, as proposed, without unduly curtailing nonenvironmental benefits.

b. An application for renewal or extension of an existing permit shall not be subject to submittal of the information required in LAC 33:VII.519.B.9.a, unless said renewal or extension encompasses changes that would constitute a major modification.

c. An application for a minor modification of an existing permit shall not be subject to submittal of the information required in LAC 33:VII.519.B.9.a.

10. The following facility groundwater monitoring information is required for all Type I and II facilities only:

a. a designation of each zone that will be monitored;

b. a map for each groundwater monitoring zone that depicts the locations of all monitoring wells (including proposed monitoring wells) that are screened in a particular zone and each zone's relevant point of compliance, along with information that demonstrates that monitoring wells meet the standards in LAC 33:VII.805.A.1 and 2. For proposed monitoring wells, the response to this requirement shall provide an implementation schedule for submitting a revised well location map showing all existing and proposed monitoring wells that are screened in each particular zone;

c. a geologic cross section along the perimeter of the facility showing screen intervals for existing and proposed monitoring wells, along with other applicable information required in LAC 33:VII.803.C.2.a. For proposed monitoring wells, the response to this requirement shall include an implementation schedule for revising applicable geologic cross sections to include the screen interval of the newly installed monitoring wells and other applicable information required in LAC 33:VII.803.C.2.a;

d. a designation of each monitoring well (including any proposed monitoring wells) as either "background" or "down gradient," for each zone that will be monitored;

e. a table displaying pertinent well construction details for each monitoring well, including the elevation of the reference point for measuring water levels to the National Geodetic Vertical Datum (NGVD), the elevation of the ground surface (NGVD), the drilled depth (in feet), the depth to which the well is cased (in feet), the depth to the top and bottom of the bentonite seal (in feet), the depth to the top and bottom of the screen (in feet), the slot size, the casing size, and the type of grout; and as-built diagrams (cross sections) of each well providing the aforementioned well construction details. For proposed monitoring wells, the response to this requirement shall provide an implementation schedule for submitting the information specified in this requirement;

f. a demonstration that the monitoring wells are constructed according to the standards in LAC 33:VII.805.A.3. For proposed monitoring wells, the response to this requirement shall provide an implementation schedule for submitting the information specified in this requirement;

g. for an existing facility, all background data and at least three years of detection monitoring data from monitoring wells in place at the time of the permit application. If this data exists in the department records, the administrative authority may allow references to the data in the permit application. For an existing facility with no wells, groundwater data shall be submitted within 90 days after the installation of monitoring wells. For a new facility or expansion, groundwater data (one sampling event) shall be submitted before waste is accepted;

h. a sampling and analysis plan that meets the standards in LAC 33:VII.805.B and includes a table that specifies each parameter, analytical method, practical quantitation limit, and Chemical Abstracts Service registry number (CAS RN); and

i. a plan for detecting, reporting, and verifying changes in groundwater.

C. In addition to the specific requirements listed in LAC 33:VII.519.B, the applicant is required to provide all information specified in the specific permit application(s) for the type(s) of facilities for which the applicant is applying. These specific application requirements are based on the technical requirements found in LAC 33:VII.Chapters 7 and 8 and will be specific to the type of application being completed.

D. Incomplete applications will not be accepted for review. When the administrative authority determines an application is incomplete, it shall notify the applicant. If the applicant elects to continue with the permit application process, the applicant shall follow the requirements provided in the notice. These requirements may include submitting additional information in the form of an application addendum or submitting an entirely new application.

E. All applicants for solid waste permits shall comply with the requirements of LAC 33:I.1701.

F. All applicants shall submit the appropriate application fee as determined by LAC 33:VII.Chapter 15 at the time of application submittal. Any application submitted without the appropriate fee will be determined incomplete and shall not be processed until the fee is remitted.

G. The applicant shall submit any additional information determined necessary by the administrative authority for a proper determination or decision regarding the application, including information determined necessary to prepare a draft or final permit decision. This may include additional information for special processes or systems and for supplementary environmental analysis.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), LR 33:2145 (October 2007), LR 37:3242 (November 2011).

#### **§520. Compliance Information**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:661 (April 1999), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), repealed LR 37:3245 (November 2011).

**§521. Part II: Supplementary Information, All Processing and Disposal Facilities**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1040 (June 2007), LR 37:1563 (June 2011), repealed LR 37:3246 (November 2011).

**§522. General Facility Geology, Subsurface Characterization, and Facility Groundwater Monitoring**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1044 (June 2007), repealed LR 37:3246 (November 2011).

**§523. Part III: Additional Supplementary Information**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Waste Services, Solid Waste Division, LR 23:1685 (December 1997), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1044 (June 2007), repealed LR 37:3246 (November 2011).

**Subchapter E. Permit Requirements**

**§525. Certification of Compliance**

A. All permitted facilities shall submit an annual certification of compliance by October 1 of each year covering the period of July 1 to June 30 immediately preceding the October 1 submittal date. This certification shall be submitted to the Office of Environmental Compliance, Surveillance Division. A form for Part I of the certification can be obtained from the Office of Environmental Compliance, however, Part II of the certification will be site specific and will set forth the site specific conditions that shall be certified in compliance with the permit. At a minimum, in addition to the requirements listed in Subsections B, C, and D of this Section, all certifications shall contain:

1. the name of the permit holder;
2. the address of the permitted facility;
3. the permit number for the facility;
4. the site identification number of the facility;
5. the agency interest identification number of the facility;
6. the name, title, address, and contact telephone number for the billing contact for the facility; and
7. any necessary calculations or conversion factors used for the certification.

B. The certification shall identify each deviation from specific permit conditions that require annual certification occurring during the reporting period and steps taken by the permit holder to return to permit conditions, as well as steps taken to insure deviations of a similar type are prevented in the future. Deviations may or may not constitute a violation of the Louisiana Environmental Quality Act or the solid waste regulations. Facilities with groundwater monitoring programs shall also identify any deviations or exceedances pertaining to the solid waste groundwater monitoring program as well as proposed remedial actions to achieve and maintain compliance with the facility's solid waste permit.

C. All certification forms shall contain the following certification of truth, accuracy, and completeness:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

This certification shall be signed by a responsible official.

D. All permitted facilities shall provide and certify the following information annually and shall provide the methods used for determining compliance (e.g., monitoring, recordkeeping and reporting, etc.):

1. the types and quantities, in wet tons, of solid waste generated, including waste generated but sent off-site for disposal. Landfarm facilities shall report in dry and wet tons;
2. the types and quantities, in wet tons, of solid waste processed, including waste generated on-site and off-site, indicating percentage of each. For waste generated off-site, indicate whether the waste was generated in-state or out-of-state. Landfarm facilities shall report in dry and wet tons;
3. the types and quantities, in wet tons, of solid waste disposed, including waste generated on-site and off-site, indicating percentage of each. For waste generated off-site, indicate whether the waste was generated in-state or out-of-state. Landfarm facilities shall report in dry and wet tons;
4. the permitted capacity in cubic yards and wet tons;
5. the remaining capacity in cubic yards and wet tons;
6. the capacity used in the reporting period in cubic yards and wet tons;
7. the estimated remaining capacity in months and years;
8. the types and quantities (in wet tons and dry tons) of materials sent off-site for reuse and/or recycling, including the end use of the material;
9. for incinerator waste-handling facilities, shredders, balers, compactors, and transfer stations, the types and quantities of solid waste transported for disposal, in wet tons;
10. the facility has complied with the requirements of the Solid Waste Worker Certification program, if applicable;
11. the facility has paid all fees due to the department. If an invoice is in dispute, include a statement pertaining to the dispute;
12. any specific item required to be certified annually as listed in the permit;

13. for landfill facilities, the permitted total height of the landfill, including all cover materials;

14. for landfill facilities, the current height of the landfill, including all cover. The method of measurement shall be included in the certification, as well as the date the measurement was taken;

15. for air curtain destructors, identify the site and quantity of solid waste processed at each individual site;

16. the facility name, city, and state of the ultimate disposal site for any waste sent off-site for disposal;

17. the facility has updated all financial assurance estimates; and

18. the facility has updated, if required, its financial assurance mechanism.

E. In addition to those items listed in Subsection D of this Section, those permit holders who received their permit prior to October 20, 2011 shall also certify the following:

1. all reports required by the permit or regulations have been submitted as required; and

2. monitoring requirements have been met.

F. Permit holders who are issued a major modification after October 20, 2011 shall submit the annual compliance certification as specified in Subsection D of this Section and in the modified permit.

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 37:3246 (November 2011).

#### **§527. Construction Schedules**

A. Final permits may allow or require the construction or upgrade of permitted units. If a permit allows or requires the construction or upgrading of a unit that is (or will be) directly involved in the processing or disposal of solid waste, the facility shall submit reports, on a schedule specified in the permit, describing the completed and current activities at the site from the beginning of the construction period until the construction certification required by LAC 33:VII.407.C is submitted to the Office of Environmental Services. The reports shall be submitted to the Waste Permits Division and the appropriate LDEQ Regional Office. These reports shall include, at a minimum, the following information:

1. a summary of construction activities to date;

2. the percentage of work completed to date;

3. the current status of the work;

4. details regarding the work scheduled to occur in the next reporting period;

5. details of the work successfully completed since the last report;

6. weather conditions for the reporting period and impacts, if any;

7. details regarding any quality control or quality assurance problems encountered; and

8. any additional information requested by the administrative authority.

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 37:3247 (November 2011).

#### **§529. Conditions Applicable to All Permitted Facilities**

A. The following conditions apply to all solid waste permits.

1. The permit holder shall comply with all conditions of a permit except that the permit holder need not comply with the conditions of a permit to the extent and for the duration such noncompliance is authorized in an emergency permit or order. Any permit noncompliance constitutes a violation of the Act and any amendments to the Act, and is grounds for enforcement action, permit suspension, revocation or modification, or denial of a permit renewal application.

2. It shall not be a defense for a permit holder in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of a permit.

3. The permit holder shall take all necessary steps to minimize and/or correct any adverse impact on the environment resulting from noncompliance with a permit.

4. The permit holder shall at all times properly operate and maintain all facilities and systems which are installed or used by the permit holder to achieve compliance with the conditions of a permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of a permit.

5. The filing of a request by the permit holder for a permit modification, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. A permit does not convey any property rights of any sort, or any exclusive privilege.

7. The permit holder shall furnish to the administrative authority, within a reasonable time, any information which may be requested to determine whether cause exists for modifying, revoking, suspending or terminating an effective permit, or to determine compliance with an effective permit. The permit holder shall also furnish, upon request, copies of records required to be kept by a permit.

8. The permit holder shall allow the administrative authority, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

a. enter upon the permit holder's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of its permit;

b. have access to and copy, at reasonable times, any records that shall be kept under the conditions of its permit;

c. inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under its permit; and

d. sample or monitor at reasonable times, for the purposes of assuring permit compliance, any substances or parameters at any location.

9. The permit holder shall report any fire, explosion, unplanned sudden or non-sudden release to air, soil, or water which may endanger health or the environment as required by the "Notification Regulations and Procedures for Unauthorized Discharges" (see LAC 33:I.Chapter 39).

10. If the permit holder determines that incorrect or incomplete information was submitted in a permit application or in any report to the administrative authority, the permit holder shall promptly submit such facts or information to the Office of Environmental Services.

11. A permit issued under these regulations does not authorize non-compliance with any other federal, state, or local regulation, law, or statute.

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 37:3247 (November 2011).

## **Chapter 7. Solid Waste Standards**

### **Subchapter A. Landfills, Surface Impoundments,**

#### **Landfarms**

#### **§709. Standards Governing Type I and II Solid Waste Disposal Facilities**

A. Location Characteristics. The information on location characteristics listed in this Subsection is required and shall be provided for all Type I and II solid waste disposal facilities.

1. - 11. ...

B. Facility Characteristics. The following facility characteristics are required for Type I and II solid waste facilities.

1. - 2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 feet buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility (or 300 feet for a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of landfills that have been closed in accordance with these regulations and for existing facilities.

B.3.b. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary,

LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2521 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2490 (October 2005), LR 33:1045 (June 2007), LR 34:613 (April 2008), LR 35:925 (May 2009). LR 37:3248 (November 2011).

#### **§711. Standards Governing Landfills (Type I and II)**

A. Surface Hydrology

1. - 2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system shall be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and /or the peak discharge from a 25-year storm event.

4. - 5. ...

6. A run-on control system shall be installed to prevent run-on during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

B. Plans and Specifications

1. - 2.d. ...

e. Interim cover or interim compacted cover shall be applied on all operating areas of a facility that will not receive solid waste for a period longer than 60 days. Interim cover or interim compacted cover must be applied within 48 hours of the last receipt of solid waste in the operating area or as soon as weather permits. Facilities that provide interim cover or interim compacted cover shall also implement erosion control measures. Any delay in the application/completion of interim cover due to weather shall not exceed seven calendar days unless a written extension is issued by the Office of Environmental Compliance.

f. - g. ...

h. The facility shall maintain a daily log which includes the following information:

i. specific area of daily and interim cover placement;

ii. source of cover material; and,

iii. depth of cover material applied.

3. - 4.f.iv. ...

v. The flow path of leachate on the liner surface shall be no greater than 100 feet to the point of collection. (For the purpose of determining this distance, the permit holder or applicant may assume that the leachate flow path is perpendicular to the leachate collection pipe along the cell floor.)

vi. The slope on the surface of the liner toward the leachate collection lines shall be a minimum of 2 percent based on post-settlement conditions. Settlements shall be calculated based on geotechnical testing performed on soil samples extracted from the site. Flatter slopes may be approved by the administrative authority if the slopes keep positive drainage and it is demonstrated that the slopes will not adversely affect the maximum required leachate head in accordance with Clause B.4.f.viii of this Subsection.

vii. The slope of all leachate collection pipes shall be a minimum of 1 percent based on post-settlement conditions. Settlements shall be calculated based on geotechnical testing performed on soil samples extracted from the site. Flatter slopes may be approved by the administrative authority if they keep positive drainage and it is demonstrated that they will not adversely affect the

maximum required leachate head in accordance with Clause B.4.f.viii of this Subsection.

viii. - xix. ...

g. Alternate leachate collection and removal system designs may be approved by the administrative authority if the applicant can demonstrate, using modeling methods acceptable to the administrative authority, that the alternate leachate collection and removal system would offer equivalent or greater groundwater protection than the protection offered in LAC 33:VII.711.B.4.f. The demonstration shall indicate the specific types of waste to be disposed and shall include all other relevant site-specific factors. If the administrative authority determines the proposed alternate leachate collection and removal system has not been demonstrated to offer equivalent or greater groundwater protection, the alternate design will be denied and the applicant will be required to follow the standards of Subparagraph B.4.f of this Subsection.

5. - 5.d. ...

#### 6. Gas Collection/Treatment or Removal System

a. Each unit of the facility with a potential for methane gas production and migration shall be required to install a gas collection/treatment or removal system:

i. when the facility is required to install a gas collection/treatment or removal system under 40 CFR Part 60, Subpart WWW; or

ii. when needed to limit methane gas to the lower-explosive limits at the facility boundary and to 25 percent of the lower explosive limits in facility buildings.

b. Sampling protocol, chain of custody, and test methods shall be established for all gas collection/treatment or removal systems.

#### 7. Slope Stability Analysis

a. A slope stability analysis shall be conducted by a professional engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering.

b. Slope stability analyses shall contain an evaluation of the slopes of cell excavations deeper than 10 feet, proposed final elevations, and critical intermediate conditions, when applicable. Both short-term and long-term analyses shall be performed.

c. A minimum safety factor of 1.5 shall be required for all slope stability analyses unless an alternate safety factor is approved by the administrative authority.

d. Verifications of landfill slopes shall include, at a minimum, analysis of critical surfaces passing through the waste mass, along the liner system interface(s), and through the foundation soils.

e. Soil parameters and conditions utilized in the slope stability analysis shall be based on in-situ geotechnical and hydrogeological data. Geotechnical testing shall be signed by a professional engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering. Geotechnical testing shall be representative of the site conditions with respect to the number of samples and types of tests selected, and in accordance with LAC 33:VII.519.B.3.b. Waste parameters utilized in the analyses shall be justified.

f. The administrative authority may require deep soil borings and/or cone penetration tests (CPTs) to be performed in addition to the soil boring requirements of LAC 33:VII.803.A.2. The number of deep soil borings

and/or cone penetration tests and their depths shall be sufficient to adequately represent the subsurface conditions for the slope stability analysis.

g. Slope stability analysis shall also be performed for vertical and lateral expansions, and for any expansion that includes an increase of steepness of the landfill slopes.

h. A report with the results of the slope stability analysis shall be prepared, clearly identifying the methods utilized. The report shall also include references and a summary of the data and parameters utilized, the location of the sections analyzed, a depiction of the slope geometry and critical surfaces, the minimum safety factor for each type of analysis, and the computer-generated print-outs.

#### C. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

##### 2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. - c.iv. ...

v. certified field notes for construction (may be stored at an off-site location with readily available access);

vi. - x. ...

xi. records, including field notes, demonstrating that liners, leachate-control systems, and leak-detection and cover systems are constructed or installed in accordance with appropriate quality assurance procedures;

xii. records on the leachate volume and results of the leachate sampling, if applicable;

2.c.xiii. - 3.b. ...

#### D. Facility Operations

##### 1. Facility Limitations

a. - j. ...

k. Operating slopes within the landfill shall be maintained in a manner that provides for the proper compaction of waste and the application of cover as required by LAC 33:VII.711.D.3.b.

2. - 2.h. ...

##### 3. Facility Operational Standards

###### a. Air-Monitoring Standards

i. Facilities receiving waste with a potential to produce methane gas shall be subject to the air-monitoring requirements of this Subparagraph. Facilities subject to this Subparagraph that are also required to maintain a surface monitoring design plan under an effective 40 CFR Part 70 (Title V) operating permit shall comply with the monitoring requirements of the Title V operating permit. Compliance with the monitoring requirements under an effective Title V operating permit shall constitute compliance with the air monitoring requirements of this Section.

a.ii. - c.ii. ...

d. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

4. - 6.e. ...

7. All permit holders shall demonstrate that the permitted landfill height has not been exceeded and shall document that information in the operating plan for the facility. Additionally, the method used to determine overall landfill height shall be documented. The landfill height shall be certified at least every five years by a professional land surveyor, licensed in the state of Louisiana, or a registered professional engineer, licensed in the state of Louisiana. This certification shall be included with the annual certification of compliance required by LAC 33:VII.525.

E. - F.3.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2523 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2024 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2492 (October 2005), LR 33:1047 (June 2007), LR 33:2145 (October 2007), LR 34:1901 (September 2008), LR 37:1564 (June 2011), LR 37:3248 (November 2011).

### **§713. Standards Governing Surface Impoundments (Type I and II)**

A. - A.2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system must be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and/or the peak discharge from a 25-year storm event. Adequate freeboard shall be provided to prevent overtopping by wave action.

4. ...

5. Surface run-on from outside the facility shall be diverted and prevented from entering the facility, with provisions for maintaining adequate freeboard above the requirements of Paragraph A.1 of this Section. A run-on control system shall be installed to prevent run-on during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

6. ...

B. Plans and Specifications

1. - 4. ...

a. Each unit of the facility with a potential for methane gas production and migration shall be required to install a gas collection/treatment or removal system:

i. when the facility is required to install a gas collection/treatment or removal system under 40 CFR Part 60, Subpart WWW; or

ii. when needed to limit methane gas to the lower-explosive limits at the facility boundary and to 25 percent of the lower-explosive limits in facility buildings.

b. Sampling protocol, chain of custody, and test methods shall be established for all gas collection/treatment or removal systems.

C. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. - c.iv. ...

v. certified field notes for construction (may be stored at an off-site location with readily available access);

vi. - x. ...

xi. records, including field notes, demonstrating that liners and leak-detection and cover systems are constructed or installed in accordance with appropriate assurance procedures;

2.xii. - 3.b. ...

D. Facility Operations

1. - 2.h. ...

3. Facility Operational Standards

a. Air-Monitoring Standards

i. Facilities receiving waste with a potential to produce methane gas shall be subject to the air-monitoring requirements of this Subparagraph. Facilities subject to this Subparagraph who are also required to maintain a surface monitoring design plan under an effective 40 CFR Part 70 (Title V) operating permit shall comply with the monitoring requirements of the Title V operating permit. Compliance with the monitoring requirements under an effective Title V operating permit shall constitute compliance with the air monitoring requirements of this Section.

ii. The permit holder or applicant subject to air-monitoring requirements shall submit to the Office of Environmental Services a comprehensive air-monitoring plan that will limit methane gas levels to less than the lower-explosive limits at the facility boundary and to 25 percent of the lower-explosive limits in facility buildings.

a.ii.(a). - d. ...

e. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

4. - 5.e. ...

#### E. Facility Closure Requirements

1. - 1.c. ...

2. Preclosure Requirements. The following standards apply to preclosure requirements for surface impoundments with on-site closure.

a. All facilities with a potential for gas production or migration shall install a gas collection/treatment or removal system, if one is not already present.

b. ...

#### 3. Closure Requirements

a. - c. ...

i. Final cover shall be a minimum of 24 inches of recompacted clay with a permeability of less than  $1 \times 10^{-7}$  cm/sec overlain with an approved geomembrane covering the entire area. Areas that are steeper than 4:1 slope do not require geomembrane overlay. Final slopes shall not be less than four percent nor greater than 3(H):1(V). Alternate final slopes may be approved by the administrative authority. Geotechnical calculations prepared by a registered professional engineer shall be provided if required by the administrative authority for all facilities whose closure plans have not been approved as of October 20, 2011.

E.3.c.ii. - F.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1053 (June 2007), LR 33:2146 (October 2007), LR 36:1241 (June 2010), LR 37:1564 (June 2011), LR 37:3250 (November 2011).

### §715. Standards Governing Landfarms (Type I and II)

#### A. Surface Hydrology

1 - 2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not completed the post-closure period to adjoining areas during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

4. ...

5. A run-on control system shall be installed to prevent run-on during the peak discharge from a 25-year storm event and/or to collect and control at least the water volume resulting from a 24-hour/25-year storm event.

A.6. - B.2.b. ...

#### C. Facility Administrative Procedures

1.a. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

b. The following information shall be included in the annual certifications submitted to the Office of Environmental Services:

i. - ii. ...

#### 2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. ...

c. Records kept on site for all facilities shall include, but not be limited to:

i. - iv. ...

v. certified field notes for construction (may be stored at an off-site location with readily available access);

2.c.vi. - 3.b. ...

#### D. Facility Operations

1. - 2.g. ...

#### 3. Facility Operational Standards

##### a. Air-Monitoring Standards

i. Facilities receiving waste with a potential to produce gases shall be subject to the air-monitoring requirements of this Subparagraph. Facilities subject to this Subparagraph who are also required to maintain a surface monitoring design plan under an effective 40 CFR Part 70 (Title V) operating permit shall comply with the monitoring requirements of the Title V operating permit. Compliance with the monitoring requirements under an effective Title V operating permit shall constitute compliance with the air monitoring requirements of this Section.

a.ii. - j. ...

k. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

D.4. - F.3.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR

26:2525 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:1676 (August 2004), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2493 (October 2005), LR 33:1058 (June 2007), LR 33:2147 (October 2007), LR 35:1880 (September 2009), LR 37:1565 (June 2011), LR 37:3251 (November 2011).

## **Subchapter B. Solid Waste Processors**

### **§717. Standards Governing All Type I-A and II-A Solid Waste Processors**

A. Location Characteristics. The information on location characteristics listed in this Subsection is required and shall be provided for all Type I-A and II-A solid waste processing and disposal facilities.

1. - 10. ...

B. Facility Characteristics. The following facility characteristics are required for Type I-A and Type II-A solid waste processors and disposers.

1. - 2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 200 feet shall be provided between the facility and the property line. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300 feet buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 200 feet from the facility (or 300 feet for a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of processing facilities that have been closed in accordance with these regulations and for existing facilities.

3.b. - 7. ...

C. Surface Hydrology

1. ...

2. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system shall be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and/or the peak discharge from a 25-year storm event.

D. - E.2.b. ...

F. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be

retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

2.b. - 3.b. ...

G. Facility Operations

1. - 2.d. ...

3. Facility Operational Standards

a. Waste Characterization. The permit holder shall review and maintain the hazardous waste determination performed by the generator in accordance with LAC 33:V.1103 for all solid waste prior to acceptance. Every year thereafter, the permit holder shall require the generator to submit either a written certification that the waste being sent to the permit holder remains unchanged or a new waste characterization. All characterizations and certification records shall be maintained on-site for a period of three years.

G.3.b. - I.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2526, 2610 (November 2000), repromulgated LR 27:704 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2494 (October 2005), LR 33:1061 (June 2007), LR 33:2148 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:1566 (June 2011), LR 37:3252 (November 2011).

## **Subchapter C. Minor Processing and Disposal Facilities**

### **§719. Standards Governing All Type III Processing and Disposal Facilities**

A. Location Characteristics. The information on location characteristics listed in this Subsection is required and shall be provided for all Type III solid waste processing and disposal facilities.

1. - 10. ...

B. Facility Characteristics. The following facility characteristics are required for all Type III solid waste facilities.

1. - 2.d. ...

3. Buffer Zones

a. Buffer zones of not less than 50 feet shall be provided between the facility and the property line. Buffer zones of not less than 200 feet shall be provided between the facility and the property line for any new facility. The requirement for a 200 feet buffer zone between the facility and the property line shall not apply to any facility existing on October 20, 2011, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. Buffer zones of not less than 300 feet shall be provided between the facility and the property line when the property line is adjacent to a structure currently being used as a church and having been used as a church prior to the submittal of a permit application. The requirement for a 300



feet buffer zone between the facility and a church shall not apply to any landfill or disposal facility existing prior to April 1, 2010, to any portion of such facility that has been closed or that has ceased operations, or to future expansions of the permitted disposal area of any such facility. A reduction in this requirement shall be allowed only with permission, in the form of a notarized affidavit, from all landowners having an ownership interest in property located less than 50 feet from the facility (for facilities existing on October 20 2011, less than 200 feet from the facility (for facilities constructed after October 20, 2011, or less than 300 feet from the facility (for facilities located less than 300 feet from a church). The facility's owner or operator shall enter a copy of the notarized affidavit(s) in the mortgage and conveyance records of the parish or parishes in which the landowners' properties are located. Buffer zone requirements may be waived or modified by the administrative authority for areas of woodwaste/construction/demolition-debris landfills that have been closed in accordance with these regulations and for existing facilities. Notwithstanding this Paragraph, Type III air curtain destructors and composting facilities that receive putrescible, residential, or commercial waste shall meet the buffer zone requirements in LAC 33:VII.717.B.3. In addition, air curtain destructors shall maintain at least a 1,000-foot buffer from any dwelling other than a dwelling or structure located on the property on which the burning is conducted (unless the appropriate notarized affidavit waivers are obtained).

3.b. - 7. ...

#### C. Surface Hydrology

1. - 2. ...

3. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the units of the facility that have not received final cover. The proposed system shall be designed to collect and control at least the water volume resulting from a 24-hour/25-year storm event and/or the peak discharge from a 25-year storm event.

C.4. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1065 (June 2007), LR 33:2149 (October 2007), LR 34:613 (April 2008), LR 35:926 (May 2009), LR 37:3252 (November 2011).

### **§721. Standards Governing Construction and Demolition Debris and Woodwaste Landfills (Type III)**

#### A. Plans and Specifications

1. - 2.a.vii. ...

b. Wastes shall be covered with silty clays applied a minimum of 12 inches thick. At a minimum, all wastes shall be covered within 30 days of disposal.

c. Wastes shall be deposited in the smallest practical area and compacted each day. Multiple working faces are prohibited.

d. The facility shall maintain a log including the following information:

i. date of cover material application;

- ii. volume of cover material applied;
- iii. description of the location where the cover material was applied;
- iv. source of the cover material; and
- v. depth of cover material applied.

3. - 3.b. ...

#### B. Facility Administrative Procedures

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

##### 2. Recordkeeping

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

b. - c. ...

i. copies of the applicable Louisiana solid waste rules and regulations;

ii. the permit;

iii. the permit application;

iv. permit modifications; and

v. a log documenting the dates of cover application and the volume of cover applied.

3. - 3.b....

#### C. Facility Operations

1. - 1.g. ...

h. Operating slopes within the landfill shall be maintained in a manner that provides for the proper compaction of waste and the application of cover material as required by LAC 33:VII.721.A.2.b and c.

2. - 5.d. ...

6. All permit holders shall demonstrate that the permitted landfill height has not been exceeded and shall document that information in the operating plan for the facility. Additionally, the method used to determine overall landfill height shall be documented. The landfill height shall be certified at least every five years by a professional land surveyor, licensed in the state of Louisiana, or a registered professional engineer, licensed in the state of Louisiana. This certification shall be included with the annual certification of compliance required by LAC 33:VII.525.

D. - E.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2527 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2495 (October 2005), LR 33:1067 (June 2007), LR 33:2149 (October 2007), LR

34:1901 (September 2008), LR 37:1566 (June 2011), LR 37:3253 (November 2011).

### **§723. Standards Governing Composting Facilities**

A. - B. ...

#### **C. Facility Administrative Procedures**

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

#### **2. Recordkeeping**

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

C.2.b. - E.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2528 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2025 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2496 (October 2005), LR 33:1069 (June 2007), LR 33:2150 (October 2007), LR 37:1567 (June 2011), LR 37:3254 (November 2011).

### **§725. Standards Governing Separation and Woodwaste Processing Facilities (Type III)**

A. - A.2.b. ...

#### **B. Facility Administrative Procedures**

1. The permit holder shall submit an annual certification of compliance, as required by LAC 33:VII.525.

#### **2. Recordkeeping**

a. The permit holder shall maintain all records specified in the application as necessary for the effective management of the facility and for preparing the required reports for the life of the facility and for a minimum of three years after final closure. These records shall be maintained on-site for a minimum of three years. These records may be retained in paper copy or in an electronic format. Electronically maintained records shall be a true and accurate copy of the records required to be maintained. Records older than three years may be kept at an off-site location provided they are readily available to the administrative authority for review upon request. All permit applications and addenda (including those pertaining to prior permits) shall be maintained with the on-site records.

B.2.b. - D.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001

(September 1994), LR 22:280 (April 1996), amended by the Office of the Secretary, LR 24:2252 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2528 (November 2000), repromulgated LR 27:705 (May 2001), amended by the Office of Environmental Assessment, LR 30:2026 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2496 (October 2005), LR 33:1073 (June 2007), LR 33:2151 (October 2007), LR 37:1567 (June 2011), LR 37:3254 (November 2011).

### **Chapter 13. Financial Assurance for All Processors and Disposers of Solid Waste**

#### **§1301. Financial Responsibility during Operation**

Repealed.

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 33:1088 (June 2007), amended LR 33:2153 (October 2007), repealed LR 37:3254 (November 2011).

#### **§1303. Financial Responsibility for Closure and Post-Closure Care**

A. - A.1. ...

2. Permit holders of existing facilities shall submit financial assurance documentation that complies with the requirements of this Chapter. Applicants or permit holders for new facilities shall submit evidence of financial assurance in accordance with this Chapter at least 60 days before the date on which solid waste is first received for processing or disposal. The financial assurance documentation shall be approved by the administrative authority prior to any acceptance of waste.

3. The applicant or permit holder shall submit to the Office of Environmental Services the estimated closure date and the estimated cost of closure and post-closure care in accordance with the following procedures.

a. The applicant or permit holder must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in these regulations. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by the closure plan, and shall be based on the cost of hiring a third party to close the facility in accordance with the closure plan.

b. The applicant or permit holder of a facility subject to post-closure monitoring or maintenance requirements must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the provisions of these regulations. The estimate of post-closure costs is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required and shall be based on the cost of hiring a third party to conduct post-closure activities in accordance with the closure plan and the most expensive costs of post-closure care during the post-closure care period.

c. The cost estimates must be adjusted within 30 days after each anniversary of the date on which the first cost estimate was prepared on the basis of either the inflation factor derived from the Annual Implicit Price Deflator for Gross Domestic Product, as published by the U.S. Department of Commerce in its *Survey of Current Business* or a reestimation of the closure and post-closure costs in accordance with Subparagraphs A.2.a and b of this Section.

The permit holder or applicant must revise the cost estimate whenever a change in the closure/post-closure plans increases or decreases the cost of the closure/post-closure plans. The permit holder or applicant must submit a written notice of any such adjustment to the Office of Environmental Services within 15 days following such adjustment.

d. For trust funds, the first payment must be at least equal to the current closure and post-closure cost estimate, divided by the number of years in the pay-in period. Subsequent payments must be made no later than 30 days after each annual anniversary of the date of the first payment. The amount of each subsequent payment must be determined by subtracting the current value of the trust fund from the current closure and post-closure cost estimates and dividing the result by the number of years remaining in the pay-in period. For landfill facilities, the initial pay-in period is based on the estimated life of the facility, up to 20 years, unless a longer term is specified in the permit. For all other facilities, the pay-in period is the initial term of the permit, unless a longer term is specified in the permit. Applicants requesting a longer pay-in period shall justify the need for the longer term to the administrative authority.

4. Minor deviations from specified language contained in the appendices of LAC 33:VII.1399 may be approved by the administrative authority on a case-by-case basis if the administrative authority determines that the revised language remains equivalent to or more stringent than the language specified in the specific appendix. The applicant shall show a specific need for the change and all changes shall be approved by the administrative authority before the document can be used to meet the requirements of this Chapter.

5. The permit holder or applicant shall notify the Office of Environmental Services within 30 days of first becoming aware of a reduction in a bond rating when using the financial test allowed by LAC 33:VII.1303.H or I.

B. Financial Assurance Mechanisms. The financial assurance mechanism must be one or a combination of the following: a trust fund, financial guarantee bond, a performance bond, a letter of credit, an insurance policy, or a financial test and/or corporate guarantee. The financial assurance mechanism is subject to the approval of the administrative authority and must fulfill the following criteria.

1. - 4. ...

5. The language of the financial assurance mechanisms listed in this Section shall ensure that the instruments satisfy the following criteria.

a. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of closure and post-closure care when needed.

b. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed.

c. The financial assurance mechanisms shall be obtained by the permit holder or applicant by the effective date of these requirements or at least 60 days prior to the initial receipt of solid waste, whichever is later, and shall provide financial assurance until the permit holder or applicant is released from the financial assurance requirements under this Section.

d. The financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

6. A financial assurance mechanism may be cancelled or terminated only if alternate financial assurance is substituted as specified in the appropriate section or if the permit holder or applicant is no longer required to demonstrate financial assurance in accordance with these regulations.

C. Trust Funds. A permit holder or applicant may satisfy the requirements of this Section by establishing a closure trust fund that conforms to the following requirements and submitting an originally signed duplicate of the trust agreement to the Office of Environmental Services.

1. - 7. ...

8. The administrative authority may, on the basis of a reasonable belief that the facility will close before pay-in is completed and the permit holder or applicant does not have adequate funds in the trust for closure and post-closure care, require reports regarding the financial condition of the permit holder or applicant. If the administrative authority finds, on the basis of such reporting or other information, that the permit holder or applicant no longer satisfies the requirements of this Subsection, the permit holder or applicant shall provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.

9. After beginning final closure, a permit holder, or any other person authorized by the permit holder to perform closure and/or post-closure, may request reimbursement for closure and/or post-closure expenditures by submitting itemized bills to the Office of Environmental Services. Within 60 days after receiving bills for such activities, the administrative authority will determine whether the closure and/or post-closure expenditures are in accordance with the closure plan or otherwise justified, and, if so, he or she shall instruct the trustee to make reimbursement in such amounts as the administrative authority specifies in writing. If the administrative authority has reason to believe that the cost of closure and/or post-closure will be significantly greater than the value of the trust fund, he may withhold reimbursement for such amounts as he deems prudent until he determines that the permit holder is no longer required to maintain financial assurance.

10. The wording of the trust agreement shall be identical to the wording in LAC 33:VII.1399.Appendix D, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The trust agreement shall be accompanied by a formal certification of acknowledgement.

D. Financial Guarantee Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a financial guarantee bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. ...

2. The permit holder or applicant who uses a financial guarantee bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of the establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by

the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in LAC 33:VII.1399.Appendix D; the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

3. - 7. ...

8. The wording of the financial guarantee 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. Performance Bonds. A permit holder or applicant may satisfy the requirements of this Section by obtaining a performance bond that conforms to the following requirements and submitting the bond to the Office of Environmental Services.

1. ...

2. The permit holder or applicant who uses a performance bond to satisfy the requirements of this Section must also provide to the administrative authority evidence of establishment of a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. The wording of the standby trust fund shall be as specified in LAC 33:VII.1399.Appendix D; the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

E.3. - G.10. ...

H. Financial Test. A permit holder, applicant, or guarantor of the permit holder or applicant, which will be responsible for the financial obligations, may satisfy the requirements of this Section by demonstrating that he or she passes a financial test as specified in this Subsection. The assets of the guarantor of the applicant or permit holder shall not be used to determine whether the applicant or permit holder satisfies the financial test, unless the guarantor has supplied a corporate guarantee as outlined in this Subsection.

1. To pass this test, the permit holder, applicant, or guarantor of the permit holder or applicant, must meet the criteria of one of the following provisions.

a. The permit holder, applicant, or guarantor of the permit holder or applicant must have:

i. tangible net worth of at least six times the sum of the current closure and post-closure cost estimates to be demonstrated by this test;

ii. ...

iii. assets in the United States amounting to either at least 90 percent of his or her total assets, or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

b. The permit holder, applicant, or guarantor of the permit holder or applicant shall have:

i. a ratio of less than 1.5 comparing total liabilities to net worth;

ii. tangible net worth of at least \$10 million; and

iii. assets in the United States amounting to either 90 percent of his or her total assets, or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

c. The permit holder, applicant, or guarantor of the permit holder or applicant must have:

i. a current rating for his or her most recent bond issuance of AAA, AA, A, or BBB, as issued by *Standard and Poor's*, or Aaa, Aa, or Baa, as issued by *Moody's*;

ii. tangible net worth of at least \$10 million; and

iii. assets in the United States amounting to either 90 percent of his or her total assets or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

d. The permit holder, applicant or guarantor of the permit holder or applicant shall have:

i. a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion, and amortization, minus \$10 million, to total liabilities;

ii. tangible net worth of at least \$10 million; and

iii. assets in the United States amounting to either 90 percent of his or her total assets, or at least six times the sum of the current closure and post-closure cost estimates, to be demonstrated by this test.

2. To demonstrate that he or she meets this test, the permit holder, applicant, or guarantor of the permit holder or applicant must submit the following three items to the Office of Environmental Services:

a. a letter signed by the chief financial officer of the permit holder, applicant, or guarantor demonstrating and certifying satisfaction of the criteria in Paragraph H.1 of this Section and including the information required by Paragraph H.4 of this Section. If the financial test is provided to demonstrate both assurance for closure and/or post-closure care and liability coverage, a single letter to cover both forms of financial responsibility is required;

b. a copy of the independent certified public accountant's report on the financial statements of the permit holder, applicant, or guarantor of the permit holder or applicant for the latest completed fiscal year; and

c. If the chief financial officer's letter providing evidence of financial assurance includes financial data that are different from the data in the audited financial statements in subsection H.2.b of this Section, a special report from the independent certified public accountant of the permit holder, applicant, or guarantor of the permit holder or applicant shall be submitted. The special report shall be based on an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and reasons for any differences.

3. The administrative authority may disallow use of this test on the basis of the opinion expressed by the independent CPA in his report on qualifications based on the financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The administrative authority will evaluate other qualifications on an individual basis. The administrative authority may disallow the use of this test on the basis of the accessibility of the assets of the guarantor, permit holder, or applicant. The permit holder, applicant, or guarantor must provide alternate financial

assurance, as specified in this Section, within 30 days after notification of disallowance.

4. The permit holder, applicant, or guarantor of the permit holder or applicant shall provide to the Office of Environmental Services a letter from the chief financial officer, the wording of which shall be identical to the wording in LAC 33:VII.1399.Appendix I, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted. The letter shall list all the current cost estimates, in state or out of state, covered by a financial test, including, but not limited to, cost estimates required for solid waste management facilities under this Section, cost estimates required for UIC facilities under 40 CFR Part 144, if applicable, cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable, cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable, and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable.

5. - 6. ...

7. After initial submission of the items specified in Paragraph H.2 of this Section, the permit holder, applicant, or guarantor of the permit holder or applicant must send updated information to the Office of Environmental Services within 90 days after the close of each succeeding fiscal year. This information must include all three items specified in Paragraph H.2 and the adjusted item specified in Subparagraph A.2.c of this Section.

8. The administrative authority may, on the basis of a reasonable belief that the permit holder, applicant, or guarantor of the permit holder or applicant may no longer meet the requirements of this Subsection, require reports of financial condition at any time in addition to those specified in Paragraph H.2 of this Section. If the administrative authority finds, on the basis of such reports or other information, that the permit holder, applicant, or guarantor of the permit holder or applicant no longer meets the requirements of Paragraph H.2 of this Section, the permit holder or applicant, or guarantor of the permit holder or applicant must provide alternate financial assurance as specified in this Section within 30 days after notification of such a finding.

9. A permit holder or applicant may meet the requirements of this Subsection for closure and/or post-closure by obtaining a written guarantee, hereafter referred to as a "corporate guarantee." The guarantor must be the direct or higher-tier parent corporation of the permit holder or applicant for the solid waste facility or facilities to be covered by the guarantee, a firm whose parent corporation is also the parent corporation of the permit holder or applicant, or a firm with a "substantial business relationship" with the permit holder or applicant. The guarantor must meet the requirements and submit all information required for permit holders or applicants in Paragraphs H.1-8 of this Section and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the administrative authority specified in Paragraphs H.2 and 4 of this Section. The wording of the corporate guarantee must be identical to the wording in LAC 33:VII.1399.Appendix J, except that instructions in brackets are to be replaced with the relevant information and the brackets removed. The

terms of the corporate guarantee must be in an authentic act signed and sworn by an authorized representative of the guarantor before a notary public and must provide that:

a. the guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in this Section;

b. the guarantor is the direct or higher-tier parent corporation of the permit holder or applicant of the solid waste facility or facilities to be covered by the guarantee, a firm whose parent corporation is also the parent corporation of the permit holder or applicant, or a firm with a "substantial business relationship" with the permit holder or applicant, and the guarantee extends to certain facilities;

c. - i. ...

j. the guarantor agrees that if the permit holder or applicant fails to provide alternative financial assurance as specified in this Section, and to obtain written approval of such assurance from the administrative authority within 60 days after the administrative authority receives the guarantor's notice of cancellation, the guarantor shall provide such alternate financial assurance in the name of the permit holder or applicant; and

k. ...

I. Local Government Financial Test. An owner or operator that satisfies the requirements of Paragraphs I.1-3 of this Section may demonstrate financial assurance up to the amount specified in Paragraph I.4 of this Section.

1. Financial Component

a. The permit holder or applicant must satisfy the following conditions, as applicable:

i. if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

ii. the permit holder or applicant must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

b. The permit holder or applicant must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency).

c. A local government is not eligible to assure its obligations under this Subsection if it:

i. is currently in default on any outstanding general obligation bonds; or

ii. has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*; or

1.c.iii. - 2. ...

3. Recordkeeping and Reporting Requirements

a. The local government permit holder or applicant must place the following items in the facility's operating record:

a.i. - b.ii. ...

c. After the initial placement of the items in the facility's operating record, the local government permit

holder or applicant must update the information and place the updated information in the operating record within 180 days following the close of the permit holder or applicant's fiscal year.

d. The local government permit holder or applicant is no longer required to meet the requirements of Paragraph I.3 of this Section when:

i. the permit holder or applicant substitutes alternate financial assurance, as specified in this Section; or

ii. the owner or operator is released from the requirements of this Chapter in accordance with Subsection A of this Section.

I.3.e. - J.2.c. ...

K. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, in accordance with this Chapter, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in Subsections C-J of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

L. Providing alternate financial assurance as specified in this Section does not constitute a modification and is not subject to LAC 33:VII.517.

M. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in Subsection A of this Section, and/or corrective action costs in LAC 33:VII.1301.A, up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

1. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a professional engineer to the Office of Environmental Services so stating;

2. the state finds the facility in compliance with applicable and appropriate permit conditions;

3. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

4. discounted cost estimates are adjusted annually to reflect inflation and years of remaining life.

N. When the permit holder is the state or federal government, the facility is exempt from the requirements of this Section.

O. The permit application should include a description of the financial structure of the operating unit including capital structure, principal ownership, and insurance coverage for personal injury and property damage.

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 36:2555 (November 2010), LR 37:3254 (November 2011).

### **§1305. Financial Responsibility for Corrective Action for Type II Landfills**

A. - B. ...

C. When the permit holder is the state or federal government, the facility is exempt from the requirements of this Section.

D. The language of the financial assurance mechanisms listed in this Section shall ensure that the instruments satisfy the following criteria.

1. The financial assurance mechanisms shall ensure that the amount of funds assured is sufficient to cover the costs of corrective action for known releases when needed.

2. The financial assurance mechanisms shall ensure that funds will be available in a timely fashion when needed.

3. The financial assurance mechanisms shall be legally valid, binding, and enforceable under state and federal law.

E. A financial assurance mechanism may be cancelled or terminated only if alternate financial assurance is substituted as specified in the appropriate Section or if the permit holder or applicant is no longer required to demonstrate financial assurance in accordance with these regulations.

F. The permit application shall include a description of the financial structure of the operating unit including capital structure, principal ownership, and insurance coverage for personal injury and property damage.

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 33:1098 (June 2007), amended LR 33:2156 (October 2007), LR 37:3258 (November 2011).

### **§1307. Incapacity of Permit Holders, Applicants, or Financial Institutions**

A. A permit holder or applicant shall notify the Office of Environmental Services by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the permit holder or applicant as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in LAC 33:VII.1303.H.9 shall make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (see LAC 33:VII.1399.Appendix J).

B. A permit holder or applicant who fulfills the requirements of LAC 33:VII.1303 or 1305 by obtaining a trust fund, financial guarantee bond, performance bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the financial guarantee bond, performance bond, letter of credit, or insurance policy to issue such instruments. The permit holder or applicant shall establish other financial assurance within 60 days after such an event.

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 37:3258 (November 2011).

### **§1399. Financial Documents—Appendices A, B, C, D, E, F, G, H, I, and J**

A. Reserved.

B. Reserved.

C. - H. ...

## I. Appendix I

### SOLID WASTE FACILITY LETTER FROM THE CHIEF FINANCIAL OFFICER (Closure and/or Post-Closure)

Secretary  
Louisiana Department of Environmental Quality  
Post Office Box 4313  
Baton Rouge, Louisiana 70821-4313  
Attention: Office of Environmental Services,  
Waste Permits Division

RE: [Facility name, agency interest number, and permit number]

Dear Sir:

I am the chief financial officer of [name and address of firm, which may be the permit holder, applicant, or parent corporation of the permit holder or applicant]. This letter is in support of this firm's use of the financial test to demonstrate financial responsibility for [insert "closure," and/or "post-closure," as applicable] as specified in [insert "LAC 33:VII.1303," or "LAC 33:VII.1301 and 1303"].

[Fill out the following three paragraphs regarding facilities and associated closure and post-closure cost estimates. If your firm does not have facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, list the facility name, site name, agency interest number, site identification number, and facility permit number.]

1. The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is guaranteed and demonstrated through a financial test similar to that specified in LAC 33:VII.1303 or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

2. This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:VII.1303," or "LAC 33:VII.1301 and 1303"], for [insert "closure care," "post-closure care," or "closure and post-closure care"] of the following facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

3. This firm is the permit holder or applicant of the following facilities, whether in Louisiana or not, for which financial assurance for closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:VII.1301 and/or 1303. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

\* \* \*

## J. Appendix J

### SOLID WASTE FACILITY CORPORATE GUARANTEE FOR CLOSURE AND/OR POST-CLOSURE CARE \* \* \*

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 33:1098 (June 2007), amended LR 37:3258 (November 2011).

## Chapter 15. Solid Waste Fees

### §1501. Standard Permit Application Review Fee

A. - D. ...

E. The administrative authority may waive fees for modifications that are:

1. initiated by the administrative authority; or
2. submitted as a result of a permit condition that requires submittal of a modification request.

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 Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:688 (May 2003), LR 29:2051 (October 2003), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 33:1108 (June 2007), amended LR 37:3258 (November 2011).

## Chapter 30. Appendices

### §3003. Public Notice Example—Appendix B

A. The following is an example of a public notice to be placed in the local newspaper after submittal of a permit application to the Office of Environmental Services for existing/proposed solid waste facilities.

PUBLIC NOTICE

OF

SUBMITTAL OF PERMIT APPLICATION

[NAME OF APPLICANT/FACILITY]

FACILITY [location], PARISH [location], LOUISIANA

Notice is hereby given that [name of applicant] submitted to the Department of Environmental Quality, Office of Environmental Services, [insert division name] an application for a permit to operate a [type of solid waste facility] in [parish name], Range \_\_, Township \_\_, Section \_\_, which is approximately [identify the physical location of the site by direction and distance from the nearest town].

Comments concerning the facility may be filed with the Secretary of the Louisiana Department of Environmental Quality at the following address:

Louisiana Department of Environmental Quality  
Office of Environmental Services  
[insert division name]  
Post Office Box 4313

Baton Rouge, Louisiana 70821-4313

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 37:3259 (November 2011).

### Subpart 2. Recycling

## Chapter 103. Recycling and Waste Reduction Rules

### §10303. Definitions

A. The following words, terms, and phrases, when used in conjunction with LAC 33:VII.Subpart 1, shall have the meanings ascribed to them in this Chapter, except where the context clearly indicates a different meaning.

\* \* \*

*Speculative Accumulation of Recyclable Materials*—the accumulation of recyclable materials for which no current use, reuse, recycling or any reasonably anticipated future market for the use, reuse, or recycling of the material exists.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:35 (January 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 37:3259 (November 2011).

**§10313. Standards Governing the Accumulation of Recyclable Materials**

A. The speculative accumulation of recyclable materials is prohibited. The recyclable materials subject to the speculative accumulation prohibition are those materials that:

1. are not exempt from regulation as a solid waste by federal or state regulations and/or statutes;
2. otherwise meet the definition of solid waste; and
3. are not in compliance with standards governing solid waste accumulation and storage set forth in LAC 33:VII.503 (e.g., such materials have been stored for more than one year without approval from the Office of Environmental Compliance).

B. A recyclable material is not speculatively accumulated, however, if:

1. the person or entity accumulating the material can demonstrate that the material is potentially recyclable, recoverable, and/or reclaimable and has a feasible means of being recycled, recovered, and/or reclaimed; and that—during the calendar year (commencing on January 1), the amount of material that is recycled, recovered, and/or reclaimed on-site and/or sent off-site for recycling equals at least 50 percent by weight or volume of the amount of the material accumulated at the beginning of the period. In calculating the percentage of turnover, the 50 percent requirement shall be applied to only material of the same type and that is recycled and in the same manner; or

2. the administrative authority otherwise exempts the recyclable material from the standards provided in this Section.

C. The burden of demonstrating that recyclable materials are not being speculatively accumulated shall rest on the person or entity accumulating the materials. Persons or entities accumulating recyclable materials for use, reuse, or recycling shall:

1. be able to demonstrate, to the satisfaction of the administrative authority, their intent to use, reuse, or recycle the materials and that a current or reasonably anticipated future market (or demand) for the use, reuse, or recycling of the material exists;

2. maintain records (e.g., manifests/trip tickets for disposal; bills of sale for materials) specifying the quantities of recyclable materials generated, accumulated and/or transported, prior to use, reuse, or recycling; and

3. maintain records (e.g., manifests/trip tickets for disposal; bills of sale for materials) demonstrating the amount (by weight or volume) of materials used, reused, or recycled.

D. Recyclable materials that are accumulated prior to being recycled shall be stored in an environmentally sound manner and releases to air, water and land shall be minimized to the maximum extent possible.

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 37:3260 (November 2011).

Herman Robinson, CPM  
Executive Counsel

1111#082

**RULE**

**Office of the Governor  
Division of Administration  
Facility Planning and Control**

Louisiana Building Code (LAC 34:III.131)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of R.S. 39:121, the Division of Administration, Facility Planning and Control has amended Title 34, Government Contracts, Procurement and Property Control, Part III, Facility Planning and Control, Chapter 1, Capital Improvement Projects to amend Section 131, Louisiana Building Code for State Owned Buildings. These rule changes are the result of a review by Facility Planning and Control of the editions of the codes specified by R.S. 40:1722 and the most recent editions of these codes. This review has led to the determination that new editions of these codes will provide a higher standard than the currently referenced editions. Facility Planning and Control is, therefore, establishing the appropriate editions of these codes as the standards.

**Title 34**

**GOVERNMENT CONTRACTS, PROCUREMENT  
AND PROPERTY CONTROL**

**Part III. Facility Planning and Control**

**Chapter 1. Capital Improvement Projects**

**Subchapter A. Procedure Manual**

**§131. Louisiana Building Code**

A. R.S. 40:1722 establishes the Louisiana Building Code and directs that the following codes be established as the minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the Life Safety Code, Standard 101, 2009 Edition as published by the National Fire Protection Association;

2. Part XIV (Plumbing) of the State Sanitary Code as promulgated by the state health officer acting through the Office of Public Health of the Department of Health and Hospitals;

3. the International Building Code, 2009 Edition as published by the International Code Council, not including Chapter 1, Administration, Chapter 11, Accessibility, Chapter 27, Electrical and Chapter 29, Plumbing Systems;

4. the International Mechanical Code, 2009 Edition as published by the International Code Council;

5. the National Electric Code (NFPA No. 70) 2008 Edition as published by the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.



HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 33:2649 (December 2007), LR 37:3260 (November 2011).

John L. Davis  
Director FPC

1111#008

## RULE

### Office of the Governor Motor Vehicle Commission

Editor's Note: This Rule is being repromulgated in its entirety to correct an error upon submission. The original Rule may be viewed in the October 20, 2011 edition of the *Louisiana Register* on pages 2995-2998.

#### Automotive Industry (LAC 46:V.Chapters 1, 13, 15 and 18)

In accordance with the provisions of the Administrative Procedures Act R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 6, the Office of the Governor, Louisiana Motor Vehicle Commission, the Louisiana Motor Vehicle Commission has adopted Paragraph B of §107 to further implement the provisions of R.S. 32:1268.2. In the country's current economic condition, manufacturers of motor vehicles and recreational products are filing for bankruptcy, discontinuing lines, and ceasing to do business at an alarming rate making it unlawful under state law for dealers to sell their new inventory. R.S. 32:1268.2 was enacted by the Legislature to allow previously franchised motor vehicle and recreational product dealers to continue to be licensed under circumstances where the manufacturer is in bankruptcy, is no longer in business, or has terminated a line. This Rule will allow the commission to license the terminated dealer to perform warranty work under an agreement with the manufacturer when a line has been terminated. This will assure the consuming public the availability of a dealer to perform warranty on a terminated vehicle.

The commission has adopted §1307 to place in its Rules its previously adopted policy regarding offsite displays by manufacturers, distributors, factory and distributor branches and new motor vehicle dealer licensees. This regulation has been in effect since 2004 and makes no change that will affect those persons covered by the Rule.

The commission has repealed provisions of its rules relating to recreational product shows and replace them with existing and new regulations and language to clarify the Rule.

Rules were adopted to implement the provisions of R.S. 32:1256 with regard to recreational product shows. Chapter 18, Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulations will be repealed. Chapter 15, Recreational Product Shows is being adopted with language to clarify the rules and put into the rule customary procedures of the commission which will assist licensees in dealing with the regulatory scheme assigned the commission. This Rule will eliminate provisions for local and regional shows and provides for a recreational product show. The fee for the show, \$500, is the

fee that has been charged for a regional show under repealed Chapter 18. The provisions for a non-resident exhibitor have not been included as the reference to non-resident exhibitors has been deleted from Title 32, Chapter 6. In addition only a licensee of the commission may offer for sale recreational products in this state. The provisions of former §1806 regarding offsite displays of marine products have been expanded to include all recreational products. A fee of \$200 is established to cover the cost to approve and inspect the offsite displays. The Rule clarifies the requirement for invitations and priority of those invitations to participate in the recreational product show. The amendment clarifies the requirements for a licensee to participate in closed or open rallies.

## Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part V. Automotive Industry Subpart 1. Motor Vehicle Commission Chapter 1. General Requirements §107. Manufacturer Termination of Franchise Liquidation of New Vehicle Inventory; Warranty Work; Exception

A. - A.5 ...

B. At the termination of the franchise the license issued by the commission may remain in effect or be renewed at the discretion of the executive director as a service center to perform warranty repairs on the vehicle under the following circumstances.

1. The dealer shall remain a dealer licensed by the commission.

2. The manufacturer, distributor or factory branch must enter into an agreement authorizing the dealer to perform warranty repairs on the terminated vehicle which agreement will comply with all provisions of R.S. 32:1251 et seq. and the rules and regulations adopted pursuant to this Chapter with regard to warranty work. The agreement must be approved upon execution and annually upon renewal of the dealer's license by the commission.

C. All applications for a license shall include evidence that the applicant has such liability protection covering its place of business and its operation that complies with the financial responsibility laws of the state of Louisiana and as determined by the applicant and its insurance agent that are necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state.

D. All applications for license as a distributor or wholesaler shall include a copy of its franchise with the person, licensed by the commission, whose product it will offer for sale to the licensees of the commission in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 36:1547 (July 2010), amended LR 37:2996 (October 2011), repromulgated LR 37:3261 (November 2011).

### Chapter 13. New Motor Vehicle Auto Shows; Offsite Displays

#### §1307. Static Offsite Displays

A. The executive director must approve all offsite displays of vehicles. A licensee's request to display vehicles

at an offsite location must be received by the commission seven days prior to the commencement of the display.

B. The location of each display must be within the licensee's defined area of responsibility for the make and model to be displayed, if applicable.

C. Each offsite display will be limited to 30 days, unless the licensee submits a copy of the contract for the location of the offsite display and then the display will be limited to the length of the contract up to a six month period. There will not be a limit on the number of offsite displays allowed per year, per licensee.

D. The number of vehicles at any offsite display will be left to the discretion of the executive director, with a maximum of six vehicles per licensee, per display.

E. The presence of any sales personnel, business cards, brochures, pricing sheets, or any other point of sale device is strictly prohibited. The only pricing information allowed on any vehicle(s) displayed will be the Maroney label which is required by federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2996, repromulgated LR 37:3261 (November 2011).

## **Chapter 15. Recreational Product Shows**

### **§1501. Authorization for Recreational Product Show**

A. The commission may authorize or prohibit recreational product shows at offsite locations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2996, repromulgated LR 37:3262 (November 2011).

### **§1503. Definitions**

*Promoter*—any person who alone or with others assumes the financial responsibility of a recreational product show in which recreational products are displayed by licensed dealers, manufacturers or distributors.

*Rally*—an event held and organized by recreational product clubs of specific product owners or manufacturers of specific products where owners of the specific products are members of the club and are invited to participate in the event.

*Recreational Product Show*—a controlled event in which a promoter charges or barter for booth space and/or charges spectator entrance in which 3 or more recreational product dealers exhibit vehicles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997, repromulgated LR 37:3262 (November 2011).

### **§1505. Promoter License Fee and Application**

A. A promoter shall obtain a license from the commission and its request for a license shall consist of the following:

1. the application for license shall be on forms prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of \$100;

3. a promoter's license shall expire on December 31.

B. All applications to the commission for display permits not received within 30 days of that start of the trade show or exposition shall be charged a \$50 late processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997, repromulgated LR 37:3262 (November 2011).

### **§1507. License Application for Recreational Product Show**

A. The promoter of a recreational product show shall be required to obtain a license for the show from the commission and its request for a license shall consist of the following:

1. the application shall be on a form prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;

2. a license fee of \$500;

3. the license shall be for the recreational product show subject of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997, repromulgated LR 37:3262 (November 2011).

### **§1509. Recreational Product Show Requirements**

A. The application must be submitted to the commission no less than 60 days prior to the opening date of the recreational product show.

B. Only licensed recreational product dealers may display and conduct sales of recreational products at recreational product shows.

C. All licensed recreational product dealers within 30 miles of the recreational product show's location must be offered the opportunity to participate in the show.

D. Not less than 30 days prior to the opening day of the recreational product show the commission must receive a list of all participating recreational product dealers.

E. Participation by a recreational product dealer shall include display of vehicles and presence of dealer personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997, repromulgated LR 37:3262 (November 2011).

### **§1511. Invitations and Priority**

A. The promoter shall contact and invite potential participants to a recreational products show as follows.

1. The promoter shall first contact all licensed recreational product dealers who sell the type of vehicle to be displayed at the recreational product show whose location is within a 30 mile radius of the show site. Those licensed recreational product dealers within the 30 mile radius of the show site or licensed recreational product dealers whose established place of business is beyond the 30 mile radius of the show site and whose area of responsibility includes the show site shall prohibit any other licensed recreational product dealers from displaying or showing that same particular line.

2. The promoter may invite, but shall accept any request from a licensed recreational product dealer, not excluded by Paragraph 1 of this Section, above, whose

established place of business is beyond the 30 mile radius of the show site. Should more than one licensed recreational product dealer of a particular line of vehicle request to participate in the recreational product show, the licensed recreational product dealer in closest proximity to the show location shall determine which licensed recreational product dealer has the first right of refusal to participate in a show based upon a radius from the show site.

3. The promoter shall maintain all records of invited, participating and declining dealers and shall furnish these records to the commission ten days prior to the opening of the recreational products show.

4. A recreational vehicle manufacturer or distributor may exhibit its recreational products at a show only through a recreational products dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997, repromulgated LR 37:3262 (November 2011).

### **§1513. Off-Site Expositions of Recreational Products**

A. The executive director must approve all off-site expositions by licensed recreational products dealers. A request for an off-site exposition, accompanied by a fee of \$200, must be received and approved by the executive director ten days prior to the commencement of the exposition. Any application received after that date shall be charged a \$50 late fee.

B. The location of any off-site exposition must be within the dealer's area of responsibility.

C. An off-site exposition of recreational products is limited to a single dealer and shall not exceed nine days.

D. A recreational products dealer may have only four off-site expositions per calendar year and at the same location only once each six months.

E. The number of vehicles at any off-site exposition of recreational products will be left to the discretion of the executive director, with a maximum of 20 vehicles.

F. The presence of any sales personnel, business cards, brochures, pricing sheets and other points of sales devices will be allowed to answer consumer questions. However, recreational products cannot be delivered from the off-site exposition location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2997, repromulgated LR 37:3263 (November 2011).

### **§1515. Licensee Participation in a Rally**

#### **A. Closed Rally**

1. A closed rally is conducted and limited to a single product line.

2. A closed rally shall be subject to the provisions of §1513 of this Chapter.

#### **B. Open Rally**

1. An open rally is conducted with multiple product lines invited to participate.

2. An open rally is subject to all provisions of this Chapter related to recreational product shows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 37:2998 (October 2011), repromulgated LR 37:3263 (November 2011).

## **Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulation**

### **§1801. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:435 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009), repealed LR 37:2998 (October 2011), repealed LR 37:3263 (November 2011).

### **§1802. License Fees and Applications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:2998 (October 2011), repealed LR 37:3263 (November 2011).

### **§1803. Order of Preference and Priority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 783 (F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:2998 (October 2011), repealed LR 37:3263 (November 2011).

### **§1804. Violations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009), repealed LR 37:2998 (October 2011), repealed LR 37:3263 (November 2011).

### **§1805. Miscellaneous Provisions; Enforcement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009), repealed LR 37:2998 (October 2011), repealed LR 37:3263 (November 2011).

### **§1806. Off-Site Displays—Marine Products**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009),

Lessie A. House  
Executive Director

1111#007

**RULE**

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

**Facility Need Review—Nursing Facilities  
(LAC 48:I.12511)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:12511 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116, 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.

In compliance with the directives of Act 433 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, adopted provisions governing the inclusion of adult residential care providers in the Facility Need Review Program and reorganized the provisions of Chapter 125 (*Louisiana Register*, Volume 34, Number 12).

The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the facility need review process for nursing facilities in order to revise the provisions governing the service area.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part 1. General Administration**

**Subpart 5. Health Planning**

**Chapter 125. Facility Need Review**

**Subchapter B. Determination of Bed, Unit, Facility or Agency Need**

**§12511. Nursing Facilities**

A. The service area for proposed or existing nursing facilities or beds is the parish in which the site is located.

1. Exception. Any parish that has any portion of the parish below Interstate 10 and which is intersected by the Mississippi river will be composed of two separate service areas as divided by the Mississippi River.

B. - J.4.a.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), LR 34:2615 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3264 (November 2011).

Bruce D. Greenstein  
Secretary

1111#069

**RULE**

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

**Mental Health Rehabilitation Program  
Termination of Parent/Family Intervention (Intensive)  
Services and Reimbursement Rate Reduction  
(LAC 50:XV.335, 501-505 and 901)**

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 50:XV.335 and amend 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. 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 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 37:3264 (November 2011).

**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 37:3264 (November 2011).

**§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 37:3264 (November 2011).

#### **§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 37:3265 (November 2011).

## **Chapter 9. Reimbursement**

### **§901. Reimbursement Methodology**

A. - F. ...

G. Effective for dates of service on or after August 1, 2010, Medicaid reimbursement shall be terminated for parent/family intervention (intensive) services.

H. Effective for dates of service on or after January 1, 2011, the reimbursement rates for Mental Health Rehabilitation services shall be reduced by 3.3 percent of the rates on file as of December 31, 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 36:2564 (November 2010), LR 37:3265 (November 2011).

Bruce D. Greenstein  
Secretary

1111#070

### **RULE**

#### **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 has amended 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. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

### **Title 50**

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

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

##### **Subpart 17. Multi-Systemic Therapy**

### **Chapter 257. Reimbursement**

#### **§25701. Reimbursement Methodology**

A. - C. ...

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.

E. Effective for dates of service on or after January 1, 2011, the reimbursement rates for multi-systemic therapy services shall be reduced by 3 percent of the rates on file as of December 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 36:2565 (November 2010), LR 37:3265 (November 2011).

Bruce D. Greenstein  
Secretary

1111#071

## RULE

### 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 has amended 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. 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 53. Outpatient Surgery

##### Subchapter B. Reimbursement Methodology

#### §5313. Non-Rural, Non-State Hospitals

A. - D. ...

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.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 2 percent of the fee schedule on file as of December 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 36:2041 (September 2010), LR 37:3266 (November 2011).

#### §5317. Children's Specialty Hospitals

A. - B.1. ...

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.

1. Final reimbursement shall be 87.91 percent of allowable cost as calculated through the cost report settlement process.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to children's specialty hospitals for outpatient surgery shall be reduced by 2 percent of the fee schedule on file as of December 31, 2010.

1. Final reimbursement shall be 86.15 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 36:2042 (September 2010), amended LR 37:3266 (November 2011).

#### Chapter 55. Clinic Services

##### Subchapter B. Reimbursement Methodology

#### §5513. Non-Rural, Non-State Hospitals

A. - D. ...

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.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 2 percent of the fee schedule on file as of December 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 36:2042 (September 2010), LR 37:3266 (November 2011).

#### §5517. Children's Specialty Hospitals

A. - B. ...

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.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to children's specialty hospitals for outpatient hospital clinic services shall be reduced by 2 percent of the fee schedule on file as of December 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 36:2042 (September 2010), amended LR 37:3266 (November 2011).

#### Chapter 57. Laboratory Services

##### Subchapter B. Reimbursement Methodology

#### §5713. Non-Rural, Non-State Hospitals

A. - D. ...

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.

F. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced

by 2 percent of the fee schedule on file as of December 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 36:2042 (September 2010), LR 37:3266 (November 2011).

#### **§5719. Children's Specialty Hospitals**

A. - B. ...

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.

D. Effective for dates of service on or after January 1, 2011, the reimbursement paid to non-rural, non-state hospitals for outpatient clinical diagnostic laboratory services shall be reduced by 2 percent of the fee schedule on file as of December 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 36:2043 (September 2010), amended LR 37:3267 (November 2011).

### **Chapter 61. Other Outpatient Hospital Services**

#### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - D. ...

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.

F. Effective for dates of service on or after January 1, 2011, 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 2 percent of the rates effective as of December 31, 2010. Final reimbursement shall be at 69.71 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 36:2043 (September 2010), LR 37:3267 (November 2011).

#### **§6119. Children's Specialty Hospitals**

A. - B.1. ...

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 87.91 percent of allowable cost as calculated through the cost report settlement process.

D. Effective for dates of service on or after January 1, 2011, 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 2 percent of the rates effective as of December 31, 2010.

1. Final reimbursement shall be 86.15 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 36:2044 (September 2010), amended LR 37:3267 (November 2011).

Bruce D. Greenstein  
Secretary

1111#072

#### **RULE**

#### **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 has amended 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. 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 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.

G. Effective for dates of service on or after January 1, 2011, the reimbursement rate for long-term personal care services shall be reduced by 5.8 percent of the rate on file as of December 31, 2010.

H. Effective for dates of service on or after April 20, 2011, shared long-term personal care services shall be reimbursed:

1. 80 percent of the rate on file as of April 19, 2011 for two participants; and
2. 70 percent of the rate on file as of April 19, 2011 for three participants.

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 37:3267 (November 2011).

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.

Bruce D. Greenstein  
Secretary

1111#073

## RULE

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

#### Pharmacy Benefits Management Program Lock-In Program (LAC 50:XXIX.Chapter 3)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXIX.Chapter 3 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 XXIX. Pharmacy

#### Chapter 3. Lock-In Program

##### §301. Introduction

A. ...

B. Lock-in is a mechanism for restricting Medicaid recipients to a specific physician and/or a specific pharmacy provider. The lock-in mechanism does not prohibit the recipient from receiving services from providers who offer services other than physician and pharmacy benefits. The lock-in mechanism:

1. ...

2. serves as an educational and monitoring parameter in instructing recipients in the most efficient method of using Medicaid services to ensure maximum health benefits.

C. A Medicaid recipient who has shown a consistent pattern of misuse or overuse of program benefits may be placed into the lock-in mechanism. Misuse and overuse is a determination made by the Department of Health and

Hospitals, Bureau of Health Services Financing. Misuse and overuse can occur in a variety of ways.

1. Misuse may take the form of obtaining prescriptions under the pharmacy program from various prescribers and/or pharmacies in an uncontrolled and unsound way.

2. Misuse may take the form of obtaining prescriptions or the dispersal of prescriptions by fraudulent actions.

D. The Bureau of Health Services Financing or its medical designee shall be responsible to determine when a recipient should be enrolled in lock-in.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3268 (November 2011).

##### §303. Recipient Placement in the Lock-In Mechanism

A. Potential lock-in recipients will be identified through review of various reports or by referral from other interested parties. Department of Health and Hospitals designee(s) who are medical professionals examine data for a consistent pattern of misuse/overuse of program benefits by a recipient. Contact with involved providers may be initiated for additional information. The medical professionals render a recommendation to place a recipient in the Physician/Pharmacy Lock-In Program or Pharmacy-Only Lock-In Program. The decision making authority rests solely with the Department of Health and Hospitals, Bureau of Health Services Financing.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3268 (November 2011).

##### §305. Agency Responsibilities

Repealed.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3268 (November 2011).

##### §307. Notification Directives

A. The department's contract designee shall notify the recipient of the decision to lock-in providers and shall include the following additional information:

1. the department's intention to allow the recipient to choose one primary care provider, one pharmacy provider, and up to three specialist providers, if warranted;

2. that Medicaid will make payments only to the physician and pharmacy providers chosen by the recipient and subsequently approved by the department;

3. that the recipient is advised to contact the department's contract designee to discuss the Pharmacy Lock-In Program; and

4. that the recipient has the right to appeal the initial lock-in decision.

5. Repealed.



B. The department's contract designee shall be responsible for the following:

1. initiate contact with the recipient in instances when the recipient fails to contact the department;
2. conduct a telephone interview with the recipient regarding the Lock-In Program and the recipient's rights and responsibilities;
3. assist the recipient, if necessary, in exercising due process rights and complete the appropriate forms at the initial contact; and
4. notify lock-in providers of their selection.

C. - D. Repealed.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3268 (November 2011).

### §309. Restrictions

A. Recipients shall be prohibited from choosing physicians and pharmacists who overprescribe or oversupply drugs. When the agency cannot approve a recipient's choice of provider(s), the lock-in recipient shall be required to make another selection.

1. In order to be approved as a Lock-In provider, the physician or pharmacy shall accept Medicaid as reimbursement for services rendered. Recipients are prohibited from paying cash for services rendered.

B. A recipient loses freedom of choice of providers once the lock-in decision has been made. Only the initial lock-in decision can be appealed. Provider selection is not appealable.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011).

### §311. Appeals

A. Administration Reconsideration. A recipient may request an administrative reconsideration of the department's determination to place the recipient in the Lock-In Program. An administrative reconsideration is an informal telephone discussion among the Bureau of Health Services Financing staff, the DHH contract designee, and the recipient. An explanation of the reason for recommending the recipient to be placed in the Lock-In Program will be provided to the recipient. An administrative reconsideration is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal under the provisions of the Administrative Procedure Act. The designated official shall have the authority to affirm the decision, to revoke the decision, to affirm part or revoke in part, or to request additional information from either the department or the recipient.

B. Administrative Appeal Process. Upon notification of DHH's determination to place the Medicaid recipient into the Lock-In Program, the recipient shall have the right to appeal such action by submitting a written request to the Division of Administrative Law within 30 days of said notification. If an appeal is timely made, the decision to Lock-In is stayed pending the hearing of the appeal.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1057 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011).

### §313. Changing Lock-In Providers

A. Recipients may change lock-in providers every year without cause. With good cause, they may change lock-in providers only with the bureau's approval. Recipients may change providers for the following "good cause" reasons:

1. a recipient relocates;
2. a recipient's primary diagnosis changes;
3. ...

4. the lock-in provider(s) stop(s) participating in the Medicaid Program and does not accept Medicaid as reimbursement for services.

a. The recipient may still receive other program services available through Medicaid such as hospital, transportation, etc., which are not controlled or restricted by placing a recipient in lock-in for pharmacy and physician services. No recipient on lock-in status shall be denied the service of a physician or pharmacist on an emergency basis within program regulations. In instances in which a recipient is referred by his lock-in physician to another enrolled Medicaid physician who is accepting Medicaid recipients, reimbursement shall be made to the physician to whom the recipient was referred.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011).

### §315. Recipient Profile Review

A. Recipients profiles are to be reviewed periodically as described in the Lock-In Procedure Manual (for determination of continuance or discontinuance of lock-in). The department's medical designee(s) examine(s) a recipient's profile for a continued pattern of misuse or overuse of program benefits. Periods of ineligibility for Medicaid will not affect the lock-in status of the individual. A review at the end of the first four months of ineligibility of lock-in closure will be made to determine if lock-in should be continued. Based upon a recommendation of the department's medical designee, a decision may be made to restore unrestricted benefits and appropriate notification will be provided to the recipient.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1058 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3269 (November 2011).

Bruce D. Greenstein  
Secretary

1111#074

**RULE**

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

Pharmacy Benefits Management Program  
Prescription Limit Reduction (LAC 50:XXIX.113)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XXIX.113 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 seq.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 1. General Provisions**

**§113. Prescription Limit**

A. Effective February 1, 2011, the Department of Health and Hospitals will pay for a maximum of four prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the four prescriptions per calendar month limitation:

1. persons under 21 years of age;
2. persons who are residents of long-term care institutions, such as nursing homes and ICF-DD facilities; and
3. pregnant women.

C. The four prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. “medically necessary override;” and
2. a valid ICD-9-CM, or its successor, diagnosis code that is directly related to each drug prescribed that is over the four prescription limit (no ICD-9-CM, or its successor, literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient’s disease state or medical condition and the current drug regime before making a determination that more than four prescriptions per calendar month is required by the recipient.

E. ...

F. An acceptable statement and ICD-9-CM, or its successor, diagnosis code is required for each prescription in excess of four for that month.

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 of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1901 (September 2009), LR 37:3270 (November 2011).

Bruce D. Greenstein  
Secretary

**RULE**

**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 has amended 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. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

**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. - D.3.q. ...

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.

F. Effective for dates of service on or after January 1, 2011, 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. 67.5 percent for the comprehensive periodontal evaluation exam;

2. 63.5 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. 57 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 36:2044 (September 2010), LR 37:3270 (November 2011).

Bruce D. Greenstein  
Secretary

1111#076

## RULE

### Department of Natural Resources Office of Conservation

Fees (LAC 43:XIX.701, 703, 705, 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 amends 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 action will adopt Statewide Order No. 29-R-11/12 (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-10/11.

#### 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.2301 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 Noncommercial 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 16.0.

*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, 2010.

*Capable Oil*—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2010.

*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, 2010.

**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, 2010, 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:XIX.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.

**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 33:2462 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009), LR 36:2567 (November 2010), LR 37:3271 (November 2011).

### §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 Fees	Amount
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
Drill Minerals Deeper (> 3,000’) (6 months)	\$504
Drill Minerals Deeper (> 10,000’) (6 months)	\$632
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’) (1 year)	\$1,264
Application to Amend Permit to Drill – Minerals	\$126
Application to Amend 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 \$6,798 per facility.

2. Operators of each permitted Type B facility are required to pay an annual Regulatory Fee of \$3,399 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$689 per well.

4. Operators of record of permitted Class III and storage wells are required to pay \$689 per well.

**C. Class I Well Fees.** Operators of permitted Class I wells are required to pay \$10,958 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	16
Tier 2	1 - 5,000	87
Tier 3	5,001 - 15,000	248
Tier 4	15,001 - 30,000	414
Tier 5	30,001 - 60,000	653
Tier 6	60,001 - 110,000	905
Tier 7	110,001 - 9,999,999	1,120

#### 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 33:2462 (November 2007), LR 34: 2404 (November 2008), LR 35:2463 (November 2009), LR 36: 2567 (November 2010), LR 37:3273 (November 2011).

**§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 36:2569 (November 2010), LR 37:3274 (November 2011).

**§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-11/12 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-11/12) supersedes Statewide Order No. 29-R-10/11 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: 2404 (November 2008), LR 35:2463 (November 2009), LR 36: 2567 (November 2010), LR 37:3274 (November 2011).

James H. Welsh  
Commissioner

1111#022

**RULE**

**Department of Public Safety and Correction  
Board of Private Security Examiners**

Security Officer—Definition; Registration; Insignia  
(LAC 46:LIX.101, 301, and 701)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., The Department of Public Safety and Corrections, Board of Private Security Examiners amends the private security examiners regulations, LAC 46:LIX.Chapters 1, 3 and 7.

The Rule amends §101, defining “security officer” pursuant to R.S. 37:3272(A)18. In addition, this Rule amends §301.Q, which immediately implements the removal of the \$10 administrative fee for security officer applications of temporary or emergency assignment workers.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIX. Private Security Examiners**

**Chapter 1. Definitions, Organization, Board  
Membership and General Provisions**

**§101. Definitions**

\*\*\*

*Security Officer*—an individual who is principally employed by a contract security company whether armed or unarmed, to protect a person or persons or property or both.

1. *Security Officer's* duties include but are not limited to the following:

- a. prevention of unlawful intrusion or entry;
- b. prevention of larceny;
- c. prevention of vandalism;
- d. protection of property or person;
- e. prevention of abuse;
- f. prevention of arson;
- g. prevention of trespass on private property;
- h. control, regulation, or direction of the flow or movements of the public, except on public streets, whether by vehicle, on foot, or otherwise;
- i. street patrol service or merchant patrol service,

which is any contract security company that utilizes foot patrols, motor vehicles, or any other means of transportation in public areas or on public thoroughfares in the performance of its security functions.

2. Professions specifically excluded from this definition are:

- a. ticket takers;
- b. ushers;
- c. wrist band monitors;
- d. meeting monitors;
- e. parking attendants;
- f. crowd counters;
- g. badge checkers;
- h. informational personnel.

\* \* \*

NOTE: In addition to the above definitions, terms outlined in these rules shall be found in R.S. 37:3272.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:846 (October 1989), LR 18:189 (February 1992), LR 23:587 (May 1997), LR 26:1067 (May 2000), LR 37:3274 (November 2011).

### **Chapter 3. Security Officer Registration**

#### **§301. Qualifications and Requirements for Security Officer Registration**

A. - P.2. ...

Q. An administrative fee of \$10 made payable to the board will be assessed on all initial company applications and renewal applications, and any other fees that may be assessed by the board under this rule, except those persons governed by Subsection N shall not be required to submit the administrative fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:753 (December 1987), amended LR 15:12 (January 1989), LR 15:848 (October 1989), LR 18:191 (February 1992), LR 23:588 (May 1997), LR 26:1072 (May 2000), LR 27:1241 (August 2001), LR 28:2204 (October 2002), LR 31:1599 (July 2005), LR 34:667 (April 2008), LR 35:2815 (December 2009), LR 37:3275 (November 2011).

### **Chapter 7. Insignias, Markings, Restrictions**

#### **§701. Restrictions**

A. - D. ...

E. The following individuals are prohibited from wearing any insignia or lettering which indicate a role or function of a security officer:

1. ticket takers;
2. ushers;
3. wrist band monitors;
4. parking attendants;
5. crowd counters;
6. badge checkers;
7. informational personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:758 (December 1987), amended LR 15:14 (January 1989), LR 15:852 (October 1989), LR 18:195 (February 1992), LR 26:1074 (May 2000), LR 34:667 (April 2008), LR 37:3275 (November 2011).

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## **RULE**

### **Department of Public Safety and Corrections Corrections Services**

#### **Administrative Remedy Procedure (LAC 22:I.325)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of Section 325, Administrative Remedy Procedure.

#### **Title 22**

### **CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

#### **Part I. Corrections**

#### **Chapter 3. Adult Services**

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

#### **§325. Administrative Remedy Procedure**

A. Purpose—to constitute the Department's "Administrative Remedy Procedure" for offenders as a regulation.

B. Applicability—deputy secretary, chief of operations, regional wardens, wardens, and sheriffs or administrators of local jail facilities. Each unit head is responsible for ensuring that all unit written policies and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that all offenders and employees have reasonable access to and comply with the department's "administrative remedy procedure" through which an offender may seek formal review of a complaint relating to most aspects of his incarceration. Offenders housed in local jail facilities shall also be afforded reasonable access to a grievance remedy procedure.

1. Revisions will be accomplished through this regulation under the signature of the secretary.

#### **D. Administrative Remedy Procedure**

1. On September 18, 1985, the Department of Public Safety and Corrections installed in all of its adult institutions a formal grievance mechanism for use by all offenders committed to the custody of the department. The process bears the name administrative remedy procedure (ARP). Offenders are required to use the procedure before they can proceed with a suit in federal and state courts.

2. Offenders are encouraged to continue to seek solutions to their concerns through informal means, but in order to ensure their right to use the formal procedure, they shall make their request to the warden in writing within a 90 day period after an incident has occurred. If, after filing in the formal procedure an offender receives a satisfactory response through informal means, the offender may request (in writing) that the warden cancel his formal request for an administrative remedy.

3. All offenders may request information about or assistance in using the procedure from their classification officer or from a counsel substitute who services their living area.

4. Original letters or requests to the warden should be as brief as possible. Offenders should present as many facts as possible to answer all questions (who, what, when, where and how) concerning the incident. If a request is unclear or the volume of attached material is too great, it may be rejected and returned to the offender with a request for clarity or summarization on one additional page. The deadline for this request begins on the date the resubmission is received in the warden's office.

5. Once an offender's request is accepted into the procedure, he must use the manila envelope that is furnished to him with the first step response (Form B-05-005-ARP-2) to continue in the procedure. The flaps on the envelope may be tucked into the envelope for mailing to the facility's ARP screening officer.

#### E. Purpose

1. Corrections Services has established the administrative remedy procedure through which an offender may seek formal review of a complaint which relates to any aspect of his incarceration if less formal methods have not resolved the matter. Such complaints and grievances include, but are not limited to any and all claims seeking monetary, injunctive, declaratory or any other form of relief authorized by law and by way of illustration, includes actions pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or challenges to rules, regulations, policies or statutes. Through this procedure, offenders shall receive reasonable responses and where appropriate, meaningful remedies.

#### F. Applicability

1. Offenders may request administrative remedies to situations arising from policies, conditions or events within the institution that affect them personally.

2. There are procedures already in place within all DPSC institutions which are specifically and expressly incorporated into and made a part of this administrative remedy procedure. These procedures shall constitute the administrative remedies for disciplinary matters and lost property claims.

3. The following matters shall not be appealable through this administrative remedy procedure:

- a. court decisions and pending criminal matters over which the department has no control or jurisdiction;
- b. Pardon Board and Parole Board decisions (under Louisiana law, decisions of these boards are discretionary, and may not be challenged);
- c. Louisiana Risk Review Panel recommendations;
- d. Lockdown Review Board decisions (offenders are furnished written reasons at the time this decision is made as to why they are not being released from lockdown, if that is the case. The board's decision may not be challenged. There are, however, two bases for request for administrative remedy on Lockdown Review Board hearings):

- i. that no reasons were given for the decision of the board;
- ii. that a hearing was not held within 90 days from the offender's original placement in lockdown or from the last hearing. There will be a 20 day grace period attached hereto, due to administrative scheduling problems of the board; therefore, a claim based on this ground will not be

valid until 110 days have passed and no hearing has been held.

#### G. Definitions

1. As used in this procedure, the following definitions shall apply.

*ARP Screening Officer*—a staff member, designated by the warden, whose responsibility is to coordinate and facilitate the administrative remedy procedure process.

*Days*—calendar days.

*Emergency Grievance*—a matter in which disposition within the regular time limits would subject the offender to a substantial risk of personal injury, or cause other serious and irreparable harm to the offender.

*Grievance*—a written complaint by an offender on the offender's own behalf regarding a policy applicable within an institution, a condition within an institution, an action involving an offender of an institution, or an incident occurring within an institution.

H. Policy. All offenders, regardless of their classification, impairment, or disability, shall be entitled to invoke this grievance procedure. It shall be the responsibility of the warden to provide appropriate assistance for offenders with literacy deficiencies or language barriers. No action shall be taken against an offender for the good faith use of or good faith participation in the procedure. Reprisals of any nature are prohibited. Offenders are entitled to pursue, through the grievance procedure, a complaint that a reprisal occurred.

1. Reviewers. If an offender registers a complaint against a staff member, that employee shall not play a part in making a decision on the request. However, this shall not prevent the employee from participating at the step one level, since this employee may be the best source from which to begin collecting information on an alleged incident. If the offender is not satisfied with the decision rendered at the first step, he should pursue his grievance to the secretary, through the chief of operations/office of adult services via the second step.

2. Communications. Offenders must be made aware of the system by oral explanation at orientation and should have the opportunity to ask questions and receive oral answers. The procedures shall be posted in writing in areas readily accessible to all offenders.

3. Written Responses. At each stage of decision and review, offenders will be provided written answers that explain the information gathered or the reason for the decision reached along with simple directions for obtaining further review.

#### I. Procedure

1. Screening. The ARP screening officer shall screen all requests prior to assignment to the first step. The screening process should not unreasonably restrain the offender's opportunity to seek a remedy. If a request is rejected, it must be for one of the following reasons, which shall be noted on the request for administrative remedy (Form B-05-005-ARP-1).

a. This matter is not appealable through this process, such as:

- i. court decisions;
- ii. Parole Board/Pardon Board decisions;
- iii. Louisiana Risk Review Panel recommendations;



iv. Lockdown Review Board (refer to Section on “applicability”).

b. There are specialized administrative remedy procedures in place for this specific type of complaint, such as:

i. disciplinary matters;

ii. lost property claims.

c. It is a duplicate request.

d. In cases where a number of offenders have filed similar or identical requests seeking administrative remedy, it is appropriate to respond only to the offender who filed the initial request. Copies of the decision sent to other offenders who filed requests simultaneously regarding the same issue will constitute a completed action. All such requests will be logged separately.

e. The complaint concerns an action not yet taken or a decision which has not yet been made.

f. The offender has requested a remedy for another offender.

g. The offender has requested a remedy for more than one incident (a multiple complaint).

h. Established rules and procedures were not followed.

i. If an offender refuses to cooperate with the inquiry into his allegation, the request may be denied due to lack of cooperation.

j. There has been a time lapse of more than 90 days between the event and the initial request, unless waived by the warden.

k. Notice of the initial acceptance or rejection of the request shall be furnished to the offender.

2. Initiation of Process. Offenders should always try to resolve their problems within the institution informally, before initiating the formal process. This informal resolution may be accomplished through discussions with staff members, etc. If the offender is unable to resolve his problems or obtain relief in this fashion, he may initiate the formal process.

a. The method by which this process is initiated is by a letter from the offender to the warden. For purposes of this process, a letter is:

i. any form of written communication which contains this phrase: “This is a request for administrative remedy” or “ARP;” or

ii. request for administrative remedy (Form B-05-005-ARP-1) at those institutions that wish to furnish forms for commencement of this process.

b. No request for administrative remedy shall be denied acceptance into the administrative remedy procedure because it is or is not on a form; however, no letter as set forth above shall be accepted into the process unless it contains the phrase, “This is a request for administrative remedy.”

c. Nothing in this procedure should serve to prevent or discourage an offender from communicating with the warden or anyone else in the Department of Public Safety and Corrections. The requirements set forth in this document for acceptance into the administrative remedy procedure are solely to assure that incidents which may give rise to a cause of action will be handled through this two step system of review. All forms of communication to the warden will be

handled, investigated, and responded to as the warden deems appropriate.

d. If an offender refuses to cooperate with the inquiry into his allegation, the request may be denied by noting the lack of cooperation on the appropriate step response and returning it to the offender.

3. Multiple Requests. If an offender submits multiple requests during the review of a previous request, they will be logged and set aside for handling at such time as the request currently in the system has been exhausted at the second step or until time limits to proceed from the first step to the second step have lapsed. The warden may determine whether a letter of instruction to the offender is in order.

4. Reprisals. No action shall be taken against anyone for the good faith use of or good faith participation in the procedure.

a. The prohibition against reprisals should not be construed to prohibit discipline of offenders who do not use the system in good faith. Those who file requests that are frivolous or deliberately malicious may be disciplined under the appropriate rule violation described in the DPSC “Disciplinary Rules and Procedures for Adult Offenders.”

#### J. Process

1. First Step (time limit 40 days). The offender commences the process by writing a letter to the warden, in which he briefly sets out the basis for his claim, and the relief sought (refer to Section on “procedure—initiation of process” for the requirements of the letter). The offender should make a copy of his letter of complaint and retain it for his own records. The original letter will become a part of the process and will not be returned to the offender. The institution is not responsible for furnishing the offender with copies of his letter of complaint. This letter shall be written to the warden within 90 days of an alleged event. (This requirement may be waived when circumstances warrant. The warden or designee shall use reasonable judgment in such matters.) The requests shall be screened by the ARP screening officer and a notice shall be sent to the offender advising that his request is being processed or is being rejected. The warden may assign another staff person to conduct further fact-finding and/or information gathering prior to rendering his response. The warden shall respond to the offender within 40 days from the date the request is received at the first step utilizing the first step response (Form B-05-005-ARP-2).

a. For offenders wishing to continue to the second step, sufficient space will be allowed on the response to give a reason for requesting review at the next level. There is no need to rewrite the original letter of request as it will be available to all reviewers at each step of the process.

2. Second Step (time limit 45 days). An offender who is dissatisfied with the first step response (Form B-05-005-ARP-2) may appeal to the secretary of the Department of Public Safety and Corrections by so indicating that he is not satisfied in the appropriate space on the response form and forwarding it to the ARP screening officer within five days of receipt of the decision. A final decision will be made by the secretary or designee and the offender shall be notified within 45 days of receipt utilizing the second step response (Form B-05-005-ARP-3). A copy of the secretary’s decision shall be sent to the warden.

a. If an offender is not satisfied with the second step response (Form B-05-005-ARP-3), he may file suit in district court. The offender must furnish the administrative remedy procedure number on the court forms.

3. Monetary Damages. The Department of Public Safety and Corrections based upon credible facts within a grievance or complaint filed by an offender, may determine that such an offender is entitled to monetary damages where monetary damages are deemed by the department as appropriate to render a fair and just remedy.

a. Upon a determination that monetary damages should be awarded, the remaining question is quantum, or the determination as to the dollar amount of the monetary damages to be awarded. The matter of determining quantum shall be transferred to the Office of Risk Management of the Division of Administration which shall then have the discretionary power to determine quantum. The determination reached by the Office of Risk Management shall be returned to the Department of Public Safety and Corrections for a final decision. If a settlement is reached, a copy of the signed release shall be given to the warden on that same date.

4. Deadlines and Time Limits. No more than 90 days from the initiation to completion of the process shall elapse, unless an extension has been granted. Absent such an extension, expiration of response time limits shall entitle the offender to move on to the next step in the process. Time limits begin on the date the request is assigned to a staff member for the first step response (Form B-05-005-ARP-2).

a. An offender may request an extension in writing of up to five days in which to file at any stage of the process. This request shall be made to the ARP screening officer for an extension to initiate a request; to the warden for the first step response (Form B-05-005-ARP-2) and to the secretary through the chief of operations/office of adult services for the second step response (Form B-05-005-ARP-3). The offender must certify valid reasons for the delay, which reasons must accompany his untimely request. The issue of sufficiency of valid reasons for delay shall be addressed at each step, along with the substantive issue of the complaint.

b. The warden may request permission for an extension of not more than five days from chief of operations/office of adult services for the step one review/response. The offender must be notified in writing of such an extension.

c. In no case may the cumulative extensions exceed 25 days.

5. Problems of an Emergency Nature. If an offender feels he is subjected to emergency conditions, he must send an emergency request to the shift supervisor. The shift supervisor shall immediately review the request and forward the request to the level at which corrective action can be taken. All emergency requests shall be documented on an unusual occurrence report.

a. Abuse of the emergency review process by an offender shall be treated as a frivolous or malicious request and the offender shall be disciplined accordingly. Particularly, but not exclusively, matters relating to administrative transfers and time computation disputes are not to be treated as emergencies for purposes of this procedure, but shall be expeditiously handled by the shift supervisor, when appropriate.

6. Sensitive Issues. If the offender believes the complaint is sensitive and that he would be adversely affected if the complaint became known at the institution, he may file the complaint directly with the secretary through the chief of operations/office of adult services (second step response (Form B-05-005-ARP-3). The offender must explain, in writing, his reason for not filing the complaint at the institution.

a. If the chief of operations/office of adult services agrees that the complaint is sensitive, he shall accept and respond to the complaint. If he does not agree that the complaint is sensitive, he shall so advise the offender in writing, and return the complaint to the warden's office. The offender shall then have five days from the date the rejection memo is received in the warden's office to submit his request through regular channels (beginning with the first step if his complaint is acceptable for processing in the administrative remedy procedure).

7. Records. administrative remedy procedure records are confidential. Employees who are participating in the disposition of a request may have access to records essential to the resolution of requests. Otherwise, release of these records is governed by R.S. 15:574.12.

a. All reports, investigations, etc., other than the offender's original letter and responses, are prepared in anticipation of litigation, and are prepared to become part of the attorney's work product for the attorney handling the anticipated eventual litigation of this matter and are therefore confidential and not subject to discovery.

b. Records shall be maintained as follows.

i. A computerized log shall document the nature of each request, all relevant dates and disposition at each step. Each institution shall submit reports on Administrative Remedy Procedure activity in accordance with department policy and procedures.

ii. Individual requests and disposition, and all responses and pertinent documents shall be kept on file at the institution or at headquarters.

iii. Records shall be kept at least three years following final disposition of the request.

8. Transferred Offenders. When an offender has filed a request at one institution and is transferred prior to the review, or if he files a request after transfer on an action taken by the sending institution, the sending institution shall complete the processing through the first step response (Form B-05-005-ARP-2). The warden of the receiving institution shall assist in communication with the offender.

9. Discharged Offenders. If an offender is discharged before the review of an issue that affects the offender after discharge is completed, or if he files a request after discharge on such an issue, the institution shall complete the processing and shall notify the offender at his last known address. All other requests shall be considered moot when the offender discharges and the process shall not be completed.

10. Annual Review. The warden shall annually solicit comments and suggestions on the processing, the efficiency and the credibility of the administrative remedy procedure from offenders and staff. A report with the results of such review shall be provided to the chief of operations/office of adult services no later than January 31 of each year.

#### K. Lost Property Claims

1. The purpose of this Section is to establish a uniform procedure for handling "lost property claims" filed by offenders in the custody of the Department of Public Safety and Corrections. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this procedure and for advising offenders and affected employees of its contents.

#### L. Procedures

1. When an offender suffers a loss of personal property, he may submit a lost personal property claim (Form B-05-005-A) to the warden or designee. The claim shall include the date the loss occurred, a full statement of the circumstances which resulted in the loss of property, a list of the items which are missing, the value of each lost item and any proof of ownership or value of the property available to the offender. All claims for lost personal property must be submitted to the warden or designee within 10 days of discovery of the loss.

2. Under no circumstances will an offender be compensated for an unsubstantiated loss, or for a loss which results from the offender's own acts or for any loss resulting from bartering, trading, selling to or gambling with other offenders.

3. The warden or designee shall assign an employee to investigate the claim. The investigative officer shall investigate the claim fully and will submit his report and recommendations to the warden or designee.

4. If a loss of an offender's personal property occurs through the negligence of the institution and/or its employees, the offender's claim may be processed in accordance with the following procedures.

##### a. Monetary:

i. the warden or designee shall recommend a reasonable value for the lost personal property (with the exception of personal clothing) as described on the lost personal property claim (Form B-05-005-A);

ii. a lost personal property claim response (Form B-05-005-B) and agreement (Form B-05-005-C) shall be completed and submitted to the offender for his signature; and

iii. the claim shall be submitted to the chief of operations/office of adult services for review and final approval.

##### b. Non-monetary:

i. the offender is entitled only to state issue where state issued items are available;

ii. the warden or designee shall review the claim and determine whether or not the institution is responsible;

iii. a lost personal property claim response (Form B-05-005-B) shall be completed and submitted to the offender for his signature;

iv. an agreement (Form B-05-005-C) shall be completed and submitted to the offender for his signature when state issue replacement has been offered.

5. If the warden or designee determines that the institution and/or its employees are not responsible for the offender's loss of property, the claim shall be denied, and a lost personal property claim response (Form B-05-005-B) shall be submitted to the offender indicating the reason. If the offender is not satisfied with the resolution at the unit level, he may indicate by checking the appropriate box on the lost personal property claim response (Form B-05-005-B) and submitting it to the screening officer within five days of receipt. The screening officer shall provide the offender with an acknowledgment of receipt and date forwarded to the chief of operations/office of adult services. A copy of the offender's original lost personal property claim (Form B-05-005-A) and lost personal property claim response (Form B-05-005-B) and other relevant documentation shall be attached.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 28:857 (April 2002), amended LR 28:1993 (September 2002), amended by the Department of Public Safety and Corrections, Corrections Services LR 37:3275 (November 2011).

James M. Le Blanc  
Secretary

1111#030

# Notices of Intent

## NOTICE OF INTENT

### Department of Children and Family Services Division of Programs Child Welfare

#### Guardianship Subsidy Program (LAC 67:V.4101)

The Department of Children and Family Services, Division of Programs has exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B), to amend the following rule in the foster care and guardianship subsidy programs.

Pursuant to Children's Bureau requirements for authorization of Louisiana's Title IV-E state plan, which allows for federal reimbursement of eligible child welfare expenditures, adjustments to the foster care and guardianship subsidy programs were necessary. It is required terminology related to the programs, types of available payments, and eligibility criteria be updated.

Action is required in this matter in order to avoid sanctions and penalties from the United States Children's Bureau. If the department does not follow the federal guidelines regarding these adjustments the department will be unable to claim federal reimbursement for eligible clients, and the department may be subject to penalties for previously claimed funds. This action was made effective by an Emergency Rule dated and effective October 1, 2011.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Community Services

#### Subpart 5. Foster Care

#### Chapter 41. Guardianship Subsidy Program

#### §4101. Subsidizing Guardianship Arrangements for Children in Foster Care

##### A. Overview of Program Purpose

1. The Subsidized Guardianship Program enables the Department of Children and Family Services (DCFS) to make payments to certified relative and fictive kin caregivers on behalf of a child who otherwise might not be able to achieve permanency outside of department custody because of special needs or other circumstances. Subsidy payments shall be limited to a child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, immediate unsubsidized custody to a relative or other caregiver, or adoption being determined unfeasible for the child. The guardianship subsidy applies only to a child(ren) for whom the DCFS holds legal custody, only to potential caregivers with whom the child had an established familial or emotional relationship prior to entering DCFS custody, and when the kinship placement provider becomes a certified foster caregiver according to the certification standards of the State, and, the child(ren) remains in the certified kinship placement for at least six consecutive months immediately prior to entering the guardianship subsidy arrangement.

2. The prospective guardianship family must meet basic foster care certification eligibility requirements in all respects except for the ability to assume complete financial responsibility for the child's care.

B. Types of Subsidy Payments. The child may be subsidized for the following services up to age 18 years.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical costs. The maintenance subsidy may be ongoing until the child reaches age 18 years, but must be renewed on a yearly basis. This renewal will be dependent upon the child remaining in the care of the guardian with whom the subsidy agreement was established. The amount of payment shall not exceed 80 percent of the state's regular foster care board rate based on the monthly flat rate payments of the regular foster care board rate for the corresponding age group. Monthly maintenance payments shall not be based on subsidized foster care arrangements such as specialized foster care, alternate family care, or therapeutic foster care. Changes in the maintenance subsidy rate routinely only occur once a year and the adjustment is typically made at the time of the subsidy renewal, or due to a change in the child's age. Adjustments to the maintenance subsidy rate may also occur due to availability of funds, legislative changes or adjustments to the regular foster care board rate.

2. Special Board Rate. Foster parents entering into a guardianship agreement for a foster child for whom a special board rate was received during the foster care episode may request up to a maximum of \$240 which is 80 percent of the special board rate amount of \$300. This is only provided if the care and needs of the child in the guardianship arrangement warrant this same special board rate. The continued need for the special board rate shall be reviewed at the time of the annual review. This review shall consist of a determination of whether the same level of specialized care by the guardian, for which the special board rate was being provided at the time of the subsidy agreement, continues to be necessary to meet the child's needs. Any reduction in the level of care required by the guardian should result in a decrease in the amount of special board rate compensation to the guardian.

##### 3. Special Services

a. The special services subsidy is time limited and in some cases may be a one time payment. It is the special assistance given to handle an anticipated expense when no other family or community resource is available. If needed, it can be offered in addition to the maintenance and special board rate subsidy. The special services subsidy must be established as a part of the initial guardianship subsidy agreement, and may not be provided or renegotiated based on any circumstances which develop or issues identified after that point. Special services subsidies include the following types of needs:

i. special medical costs deemed medically necessary for the daily functioning of the child for any

condition existing prior to the date of the initial judgment establishing guardianship with the kinship caregiver and not covered by Medicaid or other insurance;

ii. ongoing therapeutic treatment costs to complete current therapy and future treatment costs on a time limited basis up to 18 years of age, as agency resources allow, related to the abuse/neglect received by the child and impacting the child's capacity to function effectively as part of the child's educational, family or social environment. This does not include the cost of residential care or psychiatric hospitalization, nor does it include therapeutic intervention for the sole purpose of providing behavior management assistance to the guardian;

iii. legal and court costs to the potential guardian family up to \$1000 for children who are not Title IV-E eligible and up to \$2000 for children who are Title IV-E eligible for establishing the guardianship arrangement. This service is only available for costs distinct and separate from the routine costs of the child in need of care proceedings to provide for costs to the potential guardian in establishing the guardianship arrangement. This legal/and or court fee will be as a non-reoccurring, one-time payment for each guardianship episode.

b. Medicaid Eligibility. The child remains eligible for Medicaid coverage up to 18 years of age when entering a guardianship subsidy arrangement from foster care. This coverage will be eligible utilizing Title IV-E federal benefits if the child was Title IV-E eligible at the time of the subsidy arrangement. For children not eligible for Title IV-E, this coverage will be provided through Title XIX federal benefits or state general funds. For a Louisiana child who is placed out of state in a potential guardianship placement or who moves to another state after the establishment of a guardianship subsidy, if the child is eligible for Title IV-E guardianship subsidy payments, the child is also categorically eligible for Medicaid in the state in which the child resides whether that state participates in the Title IV-E Guardianship Subsidy Assistance program or not.

c. Chaffee Foster Care Independent Living Skills Training and Education Training Voucher Eligibility. The child is eligible for participation in the Chaffee Foster Care Independent Living Skills Training and for Education Training Vouchers if the child enters a guardianship arrangement from foster care after reaching 16 years of age.

#### C. Exploration of Guardianship Resources

1. Before a child is determined by the Department of Children and Family Services (DCFS) as eligible for a guardianship subsidy, it must be determined the child cannot be reunited with the parents, resources for adoptive placement must be explored by the child's worker, and it must be determined there are no relative resources available to accept guardianship of the child without subsidy payment. If the kinship family with whom the child is placed refuses to adopt the child or is unable to be certified as an adoptive family, the department has to show efforts to achieve the more permanent case goal of adoption for the child and demonstrate the benefits of maintaining the child in the placement in a guardianship arrangement as opposed to ongoing efforts in pursuing adoption or any other long term permanency arrangement. It is also necessary for the child's worker to discuss plans for a guardianship arrangement with the child and document the outcome of that discussion with

the child, including agreement with that plan by any child 14 years of age up to 18 years of age. Lack of agreement by any child 14 years of age up to 18 years of age should be an ongoing topic of counseling regarding the benefits of the arrangement between the worker and the child, until a permanency option is achieved for the child or until the child attains 18 years of age.

2. Whenever an eligible child in the custody of DCFS is legally placed based on the Interstate Compact on the Placement of Children guidelines with a certified kinship caregiver in another state, the family shall be eligible for a guardianship subsidy under the same conditions as Louisiana residents.

#### D. Eligibility Criteria

1. The DCFS, Guardianship Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and, the level of the subsidy. An agreement form between the DCFS and the prospective guardians with clearly delineated terms, must be signed prior to the granting of the final decree for guardianship. This agreement will be reviewed on an annual basis thereafter by the DCFS to insure ongoing eligibility.

2. A family is considered eligible for participation in the Guardianship Subsidy Program if they are related to the child or family of the child through blood or marriage or if there exists a fictive kin relationship, which is defined as a relationship with those individuals connected to an individual child or the family of that child through bonds of affection, concern, obligation, and/or responsibility prior to the child's original entry into the custody of the state, and the individual(s) are considered by the child or family to hold the same level of relationship with the child or family as those individuals related by blood or marriage.

#### E. Effects of Deaths of Guardians on Guardianship Subsidy

1. Where a guardianship subsidy agreement is in effect and the guardians both die prior to the child reaching the age of majority, the subsidy agreement will end. The child may remain in the care of a duly designated tutor/guardian as established by the family prior to their death, without further involvement of the agency.

2. If the duly designated tutor/guardian requires financial assistance to maintain the care of the child it will be necessary for the child to return to state custody and those individuals to become certified as foster parents and provide care to the child six consecutive months after certification and immediately prior to entering into a Guardianship Subsidy Agreement with the department. During the process of becoming certified as foster parents the family may continue to provide care to the child, as long as they are determined to be safe caregivers through a minimum of: department assessment of the home environment; fingerprint based criminal records clearances on all adults in the home; and, child abuse/neglect clearances on all adults in the home. Adoption of the child by the family will be explored by the department as well, since adoption is a more permanent relationship for the child and family. There can be no financial support of the child by the state while being cared for by the family until such family has been certified, other than incidental expenditures routinely reimbursed to other non-certified caregivers of children in foster care. Each guardianship arrangement is considered a new episode.

Therefore, the agency may provide legal and court costs to support the establishment of this new legal guardianship arrangement between the potential guardian and the child up to \$1000 for children who are not Title IV-E eligible and up to \$2000 for children who are Title IV-E eligible.

**AUTHORITY NOTE:** Promulgated in accordance with federal P.L. 110-351.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 36:552 (March 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare, LR 38:

### **§4103. Nonrecurring Expenses in Guardianship Arrangements**

A. The DCFS sets forth criteria for reimbursement of nonrecurring expenses associated with establishing guardianship arrangements for children in foster care.

1. The amount of the payment made for nonrecurring expenses associated with establishing guardianship arrangements for children in foster care shall be determined through agreement between the guardian(s) and the DCFS. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

2. The agreement for nonrecurring expenses must be signed prior to the final decree granting guardianship.

3. There must be no income eligibility requirement for guardian(s) in determining whether payments for nonrecurring expenses associated with establishing guardianship arrangements for children in foster care shall be made. However, potential guardians cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

4. The maximum rate of reimbursement for nonrecurring expenses has been set at \$1000 for children who are not Title IV-E eligible and up to \$2000 for children who are Title IV-E eligible per guardianship arrangement.

5. In cases where siblings are placed and guardianship arrangements established, whether separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

6. In cases where a child has been returned to the custody of the state and a guardianship arrangement dissolved, the child is allowed separate and complete reimbursement for nonrecurring expenses up to the maximum amount allowable for establishing another guardianship arrangement.

7. Reimbursement is limited to costs incurred by or on behalf of guardian(s) not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made directly by the DCFS.

8. When the guardianship arrangement for the child involves interstate placement, Louisiana will only be responsible for paying the nonrecurring expenses for the arrangement for the child when Louisiana is the child's legal custodian and enters into the Guardianship Subsidy Agreement with the caregiver.

9. The term nonrecurring expenses in relation to guardianship arrangements means reasonable and necessary legal fees, court costs, attorney fees and other expenses which are directly related to the legal establishment of the guardianship arrangement for a child in foster care, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other

funds. Other expenses which are directly related to the legal establishment of the guardianship arrangement for a child in foster care means the costs of the arrangement incurred by or on behalf of the guardians and for which guardians carry the ultimate liability for payment. Such costs may include but are not limited to travel costs for the child and/or guardians to be present for the legal proceedings to establish the guardianship arrangement.

**AUTHORITY NOTE:** Promulgated in accordance with P.L. 110-351.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 36:554 (March 2010), amended by the Department of Children and Family Services, Division of Programs, Child Welfare, LR 38:

#### **Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This Rule should have no impact on family stability as the service is already being provided to families taking on guardianship of relative/fictive kin children from foster care.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children as the program already exists to support guardians in the care of dependent children.

3. What effect will this have on the functioning of the family? This Rule will not impact the functioning of the family as the program already exists to support relative and fictive kin guardians taking on guardianship for children in foster care.

4. What effect will this have on family earnings and family budget? This Rule will not effect family earnings and family budget as eligible families are already receiving the subsidy.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no impact on the behavior and personal responsibility of children, as it will not change the child's caregiving setting nor resources available for the child's care.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are department functions.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. The department is unable to identify any potential impact on small businesses. The department, 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, Thursday, December 29, 2011, to Toni Buxton, Section Administrator, Foster Care and Transitioning Youth Programs, Post Office Box 3318, Baton Rouge, LA 70821.

#### **Public Hearing**

A public hearing on the proposed rule will be held on Thursday, December 29, 2011, at the Department of Children and Family Services, Iberville Building, 627 N. 4th

Street, Seminar Room 1-129, Baton Rouge, LA, beginning at 10:30 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 (225) 342-4120 (voice and TDD).

Ruth Johnson  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Guardianship Subsidy Program

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

This rule proposes to amend the Louisiana Administrative Code, LAC 67:V, Subpart 5, Chapter 41, Sections 4101 and 4103. The proposal rule is pursuant to the Federal Administration of Children and Families, Children's Bureau requirements for the re-authorization of Louisiana's Title IV-E (Child Welfare) state plan that allows for federal reimbursement of eligible child welfare, foster care, and guardianship subsidy expenditures. The proposed rule, as required by the Children's Bureau, revises and updates terminology related to the programs, types of available payments and eligibility criteria in order to receive federal reimbursement for eligible clients and prevent penalties for previously claimed funds.

Implementation of this proposed rule will allow the State to claim Federal Title IV-E match reimbursement funds at a rate of 75% of the subsidy rate for an estimated 44 Title IV-E eligible children placed in guardianship with eligible families in FY 12. The savings to the State will result from the State being able to claim Federal reimbursement for a portion of expenses previously expended from State General Funds since October 2010 on Title IV-E eligible children. As a result, the amount of State General Funds expended on guardianship subsidies for Title IV-E eligible children will decrease in FY 12. According to the department, the residual State General Funds will be used to fund additional guardianship subsidies for children not eligible for Title IV-E match or funding to maintain children in a foster care placement.

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

Implementation of this proposed rule will allow the State to claim Federal Title IV-E match reimbursement funds at a rate of 75% for an estimated 44 Title IV-E eligible children placed in guardianship with eligible families in FY 11. Title IV-E allows the State to claim uncapped federal match funds to support the costs of providing the state child welfare programs. Upon Federal approval of the State's Title IV-E plan and implementation of this proposed rule (as required by the federal Children's Bureau) the department will be able to request Federal reimbursement of approximately \$144,487 for FY 11 starting with claims dating back to October 2010 for an estimated 44 eligible children. The department anticipates an additional 44 children will be eligible annually for guardianship subsidies in the ensuing fiscal years. Therefore, the department anticipates doubling reimbursement claims to \$288,974 in FY 12 for 88 children, tripling reimbursement claims to \$433,461

in FY 13 for 132 children, and quadrupling reimbursement claims to \$577,948 in FY 14 for 176 children.

Implementation of the rule will have no effect on revenue collections of local government units.

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

Implementation of this proposed rule will not affect existing families receiving guardianship subsidy payments. However, implementation of the rule will support the financial capacity of new families eligible for guardianship subsidy payments of approximately \$274/month for the care of the related children. The families eligible for guardianship subsidies provide a stable home and assist children in achieving permanency out of the foster care system. Children currently receiving subsidies will continue receiving subsidies through age 18, and the majority of the children currently receiving subsidies will continue receiving subsidies at least through FY 14.

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

The proposed rule should have no impact on competition and employment.

Ruth Johnson  
Secretary  
1111#081

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

#### Increasing Resource Limit for Households with Elderly and Disabled Members (LAC 67:III.1983)

The Department of Children and Family Services has exercised provisions of the Administrative Procedure Act, R.S. 49:953(B) proposes to amend LAC 67:III.1983.

Pursuant to section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA), adjustments to the Supplemental Nutrition Assistance Program (SNAP) asset limit shall reflect changes for the twelve month period ending the preceding June in the Consumer Price Index (CPI) for all urban consumers and will be rounded down to the nearest \$250 increment. In accordance with the Food and Nutrition Services (FNS) SNAP policy memo dated August 29, 2011, Section 1983 of Subpart 3, Chapter 19,

Subchapter I was revised effective October 1, 2011 to increase the resource limit to \$3,250 for households that include at least one elderly or disabled member who is not categorically eligible.

Action is required in this matter in order to avoid sanctions and penalties from the United States [R.S. 49:953(B)]. If the agency does not follow the federal law regarding increasing the resource limit for households that include at least one elderly or disabled member who is not categorically eligible, the department may be subject to sanctions and penalties. This action was made effective by an Emergency Rule dated and effective October 1, 2011.

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

**Part III. Economic Stability and Self-Sufficiency**  
**Subpart 3. Supplemental Nutrition Assistance Program**  
**(SNAP)**

**Chapter 19. Certification and Eligible Households**  
**Subchapter I. Income and Deductions**

**§1983. Income Deductions and Resource Limits**

A. - 3.a. ...

B. For federal fiscal year 2011 and each subsequent federal fiscal year, the resource limit will be calculated based on changes in the Consumer Price Index for all urban consumers for the 12-month period ending the preceding June and will be rounded down to the nearest \$250 increment. The resource limit for a household is \$2,000, and effective October 1, 2011, the resource limit for a household that includes at least one elderly or disabled member is \$3,250 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. 110-246, and Section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989). Amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (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: (April 2009), amended by the Department of Children and Family Services, LR 36:2530 (November 2010), amended by the Department of Children and Family Services, Division of Programs, Economic Stability and Self-Sufficiency, LR:38:

**Family Impact Statement**

1. What effect will this Rule have on the stability of the family? This Rule should have no impact on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This 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 Rule will have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule may have a slight effect; however, there is no way to calculate the effect. All SNAP benefits are paid with 100 percent federal funds and this will have no impact on state funds.

5. What effect will this have on the behavior and personal responsibility of children? This Rule has no effect on the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are agency functions.

**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 any 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, December 29, 2011, Sammy Guillory, Deputy Assistant Secretary, Division of Programs, P.O. Box 94065, Baton Rouge, LA 70804-9065.

**Public Hearing**

A public hearing on the proposed Rule will be held on December 29, 2011, at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-129, 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 (225) 342-4120 (voice and TDD).

Ruth Johnson  
Secretary

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

**RULE TITLE: Increasing Resource Limit for**  
**Households with Elderly and Disabled Members**

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

This rule proposes to amend the Louisiana Administrative Code, LAC 67:III, Subpart 3, Chapter 19, Subchapter 1, and Section 1983. The proposed rule change is pursuant to Section 5(g) of the Food, Conservation and Energy Act of 2008 (FECA), and in accordance with a Food and Nutrition Services (FNS) Supplemental Nutrition Assistance Program (SNAP) policy memo dated August 29, 2011. The proposed rule increases the resource limit from \$3,000 to \$3,250 for households with at least one elderly or disabled member who is not categorically eligible in compliance with the revised federal law.

SNAP benefits are paid with 100% federal funds and therefore will have no impact on the State or local budget. The department only provides eligibility verification and enrollment services to families and individuals meeting specific state and federal guidelines for the SNAP program. The only cost associated with this proposed rule is the cost of publishing rulemaking that is estimated to be \$1,500 and routinely covered in the agency's annual operating budget.

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

Implementation of the proposed rule will have no effect on revenue collections of State or local government units. SNAP benefits are paid with 100% federal funds and therefore will have no impact on the State or local revenue collections.

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

Implementation of the proposed rule may result in a slight increase in the number of households who may be eligible to



receive SNAP benefits. However, there is no way to calculate the increase in households. Therefore, the exact number of households is indeterminable.

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

The proposed rule will have no impact on competition and employment.

Sammy Guillory  
Deputy Assistant Secretary  
1111#080

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Economic Development Office of the Secretary

#### Research and Development Tax Credit Program (LAC 13:I.2901, 2903, 2904, 2905 and 2911)

Under the authority of R.S. 47:6015 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to adopt LAC 13:I.3301 relative to the administration of the angel investor tax credit program.

The purpose of this regulation is to legislative changes to the research and development tax credit program under R.S. 47:6015 as enacted by Act 407 of the 2011 Regular Session of the Legislature. The proposed regulation adds clarifying definitions, specifies types of activities that are excluded from the definition of qualified research under federal guidelines, reflects the new calculation methodology as well as eliminates the alternative incremental credit, adds clarifying language explaining what types of documentation the department will require in order to process an application, and adds a time period in which the credit must be claimed for a particular expenditure.

#### 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.

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), amended by Office of the Secretary, LR 38:

#### §2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

*Affiliate*—a company that shares more than 50 percent common ownership or other means of control with respect to another company.

*Base Amount*—seventy percent of the average annual qualified research expenditures within Louisiana during the three preceding taxable years.

*Business Component*—any product, process, computer software, technique, formula, or invention which is to be held for sale, lease, license, or used in a trade or business of the taxpayer.

*Credit Certification*—a certification by DED of the amount of the Research and Development Tax Credit earned by a person for a particular tax year.

*DED*—Louisiana Department of Economic Development.

*Person*—any natural person or legal entity including an individual, corporation, partnership, or limited liability company.

*Qualified Research Expenses in the State*—expenses that are qualified research expenses under 26 U.S.C §41(b) and meet the following requirements:

a. wages described in 26 U.S.C. §41(b)(2)(A)(i) shall be paid to individuals who are residents of Louisiana and perform their services in Louisiana;

b. supplies described in 26 U.S.C. §41(b)(2)(A)(ii) shall be consumed in Louisiana;

c. expenses for the right to use computers as described in 26 U.S.C. §41(b)(2)(A)(iii) shall be for the use of computers located in Louisiana; and

d. contract research expenses as described in 26 U.S.C. §41(b)(3) shall be for services performed in Louisiana.

e. 26 U.S.C. §41 also lists certain activities that are excluded from the definition of qualified research. These exclusions include:

i. research conducted after the beginning of commercial production;

ii. activities related to the adaptation of an existing business component to a particular customer's requirements or needs;

iii. activities related to the reproduction, in whole or in part, of an existing business component from a physical examination of the business component, plans, blueprints, detailed specifications or publically available information with respect to such component;

iv. activities related to management functions or techniques, efficiency surveys, market research, testing or development, routine data collection or routine testing or inspections for quality controls.

v. research conducted using the social sciences including economics and business management, as well as behavioral sciences, arts and humanities; and

vi. research funded by a contract, grant, or otherwise by another person or governmental entity.

*Research and Development Tax Credits*—credits against Louisiana income or corporation franchise taxes that are earned by a person pursuant to the provisions of the Research and Development Tax Credit Program.

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 Office of the Secretary, LR 38:

**§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 persons (including affiliates) 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 persons (including affiliates), 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 difference between the Louisiana qualified research expenses for the taxable year minus the base amount, if the applicant is an entity that employs 100 or more persons (including affiliates); or
2. 20 percent of the difference, between the Louisiana qualified research expenses for the taxable year minus the base amount, if the applicant is an entity that employs 50 to 99 persons (including affiliates); or
3. 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 persons (including affiliates), or
4. 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, 2019.

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), amended by Office of the Secretary, LR 38

**§2905. Certification of Amount of Credit**

A. Prior to claiming a research and development tax credit on any tax return or selling any research and development tax credit, a person must apply for and obtain a credit certification from DED.

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;

d. the DED will also require all the following documentation as proof of an expenditure prior to certification:

- i. wages:
  - (a). copy of W-2 for each employee who participates in qualifying research and development activities;
  - (b). percentage of each employee's salary that is dedicated to qualifying research and development activities;
  - (c). Louisiana Workforce Commission Quarterly Report of wages paid for the company for the third and fourth quarter of the tax year in question;
- ii. supplies:
  - (a). invoices with date of purchase included;
- iii. contracted research:
  - (a). invoices with applicable dates or periods of work;
  - (b). contracts for the research to be performed;
- e. in order for any research and development project to qualify, the requesting company must identify:
  - i. the business component that was developed or improved;
  - ii. the uncertainty that existed in the capability, method or design related to such business component;
  - iii. how the research was technological in nature; and
  - iv. the process of experimentation undertaken;
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. DED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

D. In order for credits to be awarded, a taxpayer must claim the expenditures within one year after December 31 of the year in which the expenditure was incurred. For example, Company A buys a piece of equipment that would qualify for the research and development tax credit on May 15, 2011. In order for Company A to receive a credit on that expenditure, the application for credit on that expense must be received by December 31, 2012.

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), amended by Office of the Secretary, LR 38:

### **§2911. Recapture of Credits**

A. An application for credit certification shall constitute:

1. a consent by the taxpayer that credits granted under this Section, but later disallowed in whole or in part, may be recovered by the secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by the provisions of R.S. 47:6015(H); and

2. a consent by the taxpayer that the Department of Revenue may disclose to DED, any tax information of the taxpayer related to the earning of, or use of research and development tax credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

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), amended by Office of the Secretary, LR 38:

### **Family Impact Statement**

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49.972.

### **Public Comments**

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by fax to (225) 342-9448, or by email to [danielle.clapinski@la.gov](mailto:danielle.clapinski@la.gov). All comments must be received no later than 5 p.m., on January 3, 2012.

### **Public Hearing**

A public hearing to receive comments on the Notice of Intent will be held on January 3, 2012 at 10 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: Research and Development Tax Credit Program**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. The Department of Economic Development intends to administer the program with existing personnel with no additional appropriation required.

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

Act 407 of the 2011 legislative session makes several changes that will affect the revenue collections to state

government. The legislation extends the program until December 31, 2019 which will cause a revenue decrease for fiscal years 2014, 2015, and 2016. Other statutory changes to the program, including the new base calculation, the repeal of the 25% alternative incremental credit, the inclusion of all affiliated companies in the employee count and the prohibition against multiple benefits, will result in a net increase on revenue collections for the remainder of the program. Finally, the rule disallows credits for activities that take place prior to the tax year following the year in which the qualifying activity took place, which would reduce credits and increase state revenue. Using historical program data and barring any adjustments by recipients to avoid disqualification due to missed deadlines, it is estimated that about 15% of credits granted would not have been eligible under this new rule. Thus, the impacts of Act 407 are reduced by 15%. Considering all of these changes the total net effect on revenue collections is estimated to be as follows: FY 2012 revenue increase of \$5.4M, FY 2013 revenue increase of \$6.2, FY 2014 revenue decrease of (\$8.5M), FY 2015 revenue decrease of (\$29.3M) and FY 2016 revenue decrease of (\$35.5M).

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

The income of businesses conducting qualified research and development will increase by the amount of benefits received under this program. The change from 50 Louisiana residents to 50 persons including employees of affiliates and the change in base calculation will reduce the benefit some companies receive under the program as could the requirement for timely filing.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Kristy McKearn  
Undersecretary  
1111#040

Gregory Albrecht  
Chief Economist  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Department of Economic Development Louisiana Economic Development Corporation**

Louisiana Seed Capital (LSC) Program and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.Chapters 77 and 87)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, LA. R.S. 49:950, et seq., and as authorized by LA. R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby give notice of their intent to amend, supplement, expand and re-adopt the rules of the Louisiana Seed Capital (LSC) Program, LAC Title 19: Part VII, Subpart 11, Chapter 1, and to adopt new rules for the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program, LAC Title 19: Part VII, Subpart 11, Chapter 87.

The Department of Economic Development, Office of the Secretary, Office of Economic Development, and the

Louisiana Economic Development Corporation, have found a need to amend, supplement and expand certain provisions of and to readopt the rules regarding the Louisiana Seed Capital (LSC) Program and to create the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to these rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will encourage the formation of Louisiana-based venture capital funds intended to provide investment capital to create and grow start-up and early-stage Louisiana businesses. These programs will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. This new program will utilize SSBCI funds to make seed-stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. These programs will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of business concerns in Louisiana; will help small businesses grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities in all areas of our State. These programs will further help secure the creation or retention of jobs created by businesses in Louisiana that require state assistance in order to start, maintain or expand their operations, and/or increase their capital investment in Louisiana. Without these revisions, re-adoption of rules and adoption of new rules the state may suffer the loss of business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this State.

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

#### **Family Impact Statement**

These proposed Rules 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: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or 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: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P. O. Box 94185, Baton Rouge, Louisiana 70804-9185; or physically delivered to: Capitol Annex Building, Second Floor, Room 229, 1051 North 3rd Street, Baton Rouge, LA, 70802. All comments must be submitted (mailed and received) not later than 5 p.m., on Tuesday, December 22, 2011.

Stephen M. Moret,  
Secretary,

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

#### **RULE TITLE: Louisiana Seed Capital Program and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule addresses the state Seed Capital Program and adds rules for a federally based seed capital program through the State Small Business Credit Initiative. The rules define current practice with regard to the existing program and provide new definitions and guidance for applicants with regard to the new program. There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules, since the revisions of the rules for the existing program and the new rules for the new will be managed by existing staff under the current budget. Federal funds are already appropriate and will be utilized for any additional administrative costs in connection with the new program.

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

The revisions to the existing program rules do not change existing fees in the program, so there is no expected impact or effect on revenue collections or state or local governmental units. For seed capital disbursements, federal funds in the amount of \$5.168 million over three years are available and appropriated in the base departmental budget for the new program.

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

The new program will require adherence to the application procedures which will involve submission of paperwork by the applicants. However, recipients will benefit by obtaining access to capital made available to them through the program.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may slightly increase in participating businesses, employment may be slightly lessened in other competing businesses that do not participate in the program.

Kristy G. McKearn  
Undersecretary  
1111#037

Greg V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Economic Development Louisiana Economic Development Corporation

Small Business Loan and Guaranty (SBL and G) Program  
and State Small Business Credit Initiative (SSBCI) Program  
(LAC 19:VII.Chapters 1 and 3)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, LA. R.S. 49:950, et seq., and as authorized by LA. R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby give notice of their intent to amend, supplement, expand and re-adopt the rules of the Small Business Loan and Guaranty (SBL&G) Program provided in LAC Title 19: Part VII, Subpart 1, Chapter 1, and to adopt new rules for the State Small Business Credit Initiative (SSBCI) Program, LAC Title 19: Part VII, Subpart 1, Chapter 3.

The Department of Economic Development, Office of the Secretary, Office of Economic Development, and the Louisiana Economic Development Corporation, have found a need to amend, supplement and expand certain provisions of and to readopt the rules regarding the Small Business Loan and Guaranty (SBL&G) Program and to create the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to these rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana; will help them grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities, especially for small business enterprises in all areas of our State, including distressed and rural areas. These programs will further help secure the creation or retention of jobs created by small businesses in Louisiana that require state assistance in order to start, maintain or expand their operations, and/or increase their capital investment in Louisiana. Without these revisions, re-adoption of rules and adoption of new rules the state may suffer the loss of small business investment and economic development projects creating economic growth in Louisiana and creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this State.

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

#### Family Impact Statement

These proposed Rules 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: the

stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or 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: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P. O. Box 94185, Baton Rouge, Louisiana 70804-9185; or physically delivered to: Capitol Annex Building, Second Floor, Room 229, 1051 North 3rd Street, Baton Rouge, Louisiana, 70802. All comments must be submitted (mailed and received) not later than 5 p.m., on Tuesday, December 22, 2011.

Stephen M. Moret  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Small Business Loan and Guaranty Program and State Small Business Credit Initiative Program

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

The proposed rules amend those for an existing program (Small Business Loan and Guaranty Program). There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. Both programs are expected to be administered by existing staff with no additional appropriations required. Federal funds are already appropriated in the department's base budget for this purpose and will be utilized for any additional administrative costs that may arise in connection with the new program.

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

The revisions to the existing program rules do not change existing fees in the program, so there is no expected impact or effect on the revenue collections of state or local governmental units with regard to the proposed rule as it relates to the Small Business Loan and Guaranty program.

The new program, the State Small Business Credit Initiative Program, provides for a loan guarantee fee not to exceed 2% of the loan guaranteed amount unless waived by the Board of Directors of Louisiana Economic Development Corporation which will be administering the program. The federal funds invested into the program could total as much as \$8 Million payable in increments over a three year period, so the new program could conceivably generate a total of \$160,000 in fees over the next three year term of the federal program. Any fees collected will be placed in the revolving fund and made available for loans and guaranties under the program up to the appropriated amount.

There will be no expected impact or effect on revenue collections for local governmental units with regard to the new or existing programs.

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

The new program will require adherence to the application procedures which will involve submission of paperwork by the

applicants. However, recipients will benefit by obtaining access to credit made available to them through the program.

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

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Kristy G. McKearn  
Undersecretary  
1111#036

Greg V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Office of the Governor Board of Architectural Examiners

#### Continuing Education (LAC 46:I.1315)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners gives notice that rule making procedures have been initiated for the amending of LAC 46:I.1315 pertaining to the mandatory continuing education which an architect must complete to renew his or her architectural license. The proposed rules, if adopted, will make the existing rules regarding continuing education coincide with recently adopted National Conference of Architectural Registration Boards Resolution 2011-1. The purpose of the proposed rules is to make the Louisiana rules for continuing education uniform with the rules for continuing education throughout the country.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part I. Architects

#### Chapter 13. Administration

#### §1315. Continuing Education

A. Purpose and Scope. These rules provide for a continuing education program to insure that all architects remain informed of those technical and professional subjects necessary to safeguard life, health, and promote the public welfare. These rules shall apply to all architects practicing architecture in this state.

B. Exemptions. An architect shall not be subject to these requirements if:

1. a newly registered architect during his or her initial year of registration;

2. the architect has been granted emeritus or other similar honorific but inactive status by the board, or an emeritus status architect as defined by board rule §1105.E;

3. the architect otherwise meets all renewal requirements and is called to active military service, has a serious medical condition, or can demonstrate to the board other like hardship, then upon the board's so finding, the architect may be excused from some or all of these requirements.

#### C. Definitions

*AIA*—the American Institute of Architects.

*AIA/CES*—the continuing education system developed by *AIA* to record professional learning as a mandatory requirement for membership in the *AIA*.

*ARE*—the Architect Registration Examination prepared by the National Council of Architectural Registration Boards.

*Board*—the Louisiana State Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, LA 70809, Telephone: (225) 925-4802, Telecopier: 225-925-4804, website: <http://www.lastbdarchs.com>.

*Continuing Education (CE)*—continuing education is a post-licensure learning that enables a registered architect to increase or update knowledge of and competence in technical and professional subjects related to the practice of architecture to safeguard the public's health, safety, and welfare.

*Continuing Education Hour (CEH)*—one continuous instructional hour (50 to 60 minutes of contact) spent in structured educational activities intended to increase or update the architect's knowledge and competence in health, safety, and welfare subjects. If the provider of the structured educational activities prescribes a customary time for completion of such an activity, then such prescribed time shall, unless the board finds the prescribed time to be unreasonable, be accepted as the architect's time for continuing education hour purposes irrespective of actual time spent on the activity.

*Health, Safety, and Welfare Subjects*—technical and professional subjects that the board deems appropriate to safeguard the public and that are within the following enumerated areas necessary for the proper evaluation, design, construction, and utilization of buildings and the built environment:

a. legal—laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public;

b. building systems—structural, mechanical, electrical, plumbing, communications, security, fire protection;

c. environmental—energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, insulation;

d. occupant comfort—air quality, lighting, acoustics, ergonomics;

e. materials and methods—construction systems, products, finishes, furnishings, equipment;

f. preservation—historic, reuse, adaption;

g. pre-design—land use analysis, programming, site selection, site and soils analysis, surveying;

h. design—urban planning, master planning, building design, site design, interiors, safety and security measures;

i. construction documents—drawings, specifications, delivery methods;

j. construction contract administration: contracts, bidding, contract negotiations.

*NCARB*—the National Council of Architectural Registration Boards.

*Non-Resident Architect*—an architect registered by the board and residing outside Louisiana.

*Resident Architect*—an architect residing in this state.

*Sponsor*—an individual, organization, association, institution or other entity which offers an educational activity for the purpose of fulfilling the continuing education requirements of these rules.

*Structured Educational Activities*—educational activities in which at least 75 percent of an activity's content and instructional time must be devoted to health, safety, and welfare subjects related to the practice of architecture, including courses of study or other activities under the areas identified as health, safety and welfare subjects and provided by qualified individuals or organizations whether delivered by direct contact or distance learning methods.

D. Continuing Education Requirements

1. Beginning with license renewals effective January 1, 1999, all architects must show compliance with the educational requirements of these rules as a condition for renewing registration.

2. In addition to all other requirements for registration renewal, an architect must complete a minimum of 12 continuing education hours each calendar year or be exempt from these continuing education requirements as provided above. Failure to comply with these requirements may result in non-renewal of the architect's registration or other discipline as set forth below.

3. Continuing Education Hours. Continuing education hours must be completed in health, safety, and welfare subjects acquired in structured educational activities. Continuing education hours may be acquired at any location. Excess continuing education hours may not be credited to a future calendar year.

4. If an architect is being re-registered after having been unregistered then, in addition to all other requirements, the architect must have acquired that number of total continuing education hours that would have been required if registration had been regularly renewed.

E. Acceptable Educational Activities

1. Credit will be allowed only for continuing education activities in areas which:

a. directly safeguard the public's health, safety, and welfare; and

b. provide individual participant documentation from a person other than the participant for record keeping and reporting.

2. Acceptable continuing educational activities in health, safety, and welfare subjects include the following:

a. attending professional or technical health, safety, and welfare subject seminars, lectures, presentations, courses, or workshops offered by a professional or technical organization (AIA, National Fire Protection Association, Concrete Standards Institute, NCARB, etc.), insurer, or manufacturer;

b. successfully completing health, safety, and welfare subject tutorials, short courses, correspondence courses, televised courses, or video-taped courses offered by a provider mentioned in the preceding Subparagraph;

c. successfully completing health, safety, and welfare subject monographs or other self-study courses such as those sponsored by NCARB or a similar organization which tests the architect's performance;

d. making professional or technical health, safety, and welfare subject presentations at meetings, conventions or conferences;

e. teaching or instructing health, safety, and welfare subject courses;

f. authoring a published paper, article or book;

g. successfully completing college or university sponsored courses; and

h. service upon NCARB committees dealing with health, safety, and welfare subjects.

3. Continuing educational activities need not take place in Louisiana, but may be acquired at any location.

4. All continuing education activities shall:

a. have a clear purpose and objective;

b. be well organized and provide evidence of pre-planning;

c. be presented by persons who are well qualified by education or experience in the field being taught;

d. provide individual participant documentation from a person other than the participant for record keeping and reporting; and

e. shall not focus upon the sale of any specific product or service offered by a particular manufacturer or provider.

F. Number of Continuing Education Hours Earned

1. Continuing education credits shall be measured in continuing education hours and shall be computed as follows.

a. Attending seminars, lectures, presentations, workshops, or courses shall constitute one continuing education hour for each contact hour of attendance.

b. Successfully completing tutorials, short courses, correspondence courses, televised or video-taped courses, monographs and other self-study courses shall constitute the continuing education hours recommended by the program sponsor.

c. Teaching or instructing a qualified seminar, lecture, presentation, or workshop shall constitute two continuing education hours for each contact hour spent in the actual presentation. Teaching credit shall be valid for teaching a seminar or course in its initial presentation only. Teaching credit shall not apply to full-time faculty at a college, university or other educational institution.

d. Authoring a published paper, article or book shall be equivalent of eight continuing education hours .

e. Successfully completing one or more college or university semester or quarter hours shall satisfy the continuing education hours for the year in which the course was completed.

2. Any health, safety, and welfare subject contained in the record of an approved professional registry will be accepted by the board as fulfilling the continuing education requirements of these rules. The board approves the AIA as a professional registry, and contact hours listed in health, safety, and welfare subjects in the AIA/CES transcript of continuing education activities will be accepted by the board for both resident and non-resident architects.

G. Reporting, Record Keeping and Auditing

1. An architect shall complete and submit forms as required by the board certifying that the architect has completed the required continuing education hours. The board requires that each architect shall complete the language on the renewal application pertaining to that architect's continuing education activities during the calendar year immediately preceding the license renewal period. Any untrue or false statement or the use thereof with respect to course attendance or any other aspect of

continuing educational activity is fraud or misrepresentation and will subject the architect and/or program sponsor to license revocation or other disciplinary action.

2. To verify attendance each attendee shall obtain an attendance certificate from the program sponsor. Additional evidence may include but is not limited to attendance receipts, canceled checks, and sponsor's list of attendees (signed by a responsible person in charge of the activity). A log showing the activity claimed, sponsoring organization, location, duration, etc., should be supported by other evidence. Evidence of compliance shall be retained by the architect for two years after the end of the period for which renewal was requested.

3. The renewal applications or forms may be audited by the board for verification of compliance with these requirements. Upon request by the board, evidence of compliance shall be submitted to substantiate compliance of the requirements of these rules. The board may request further information concerning the evidence submitted or the claimed educational activity. The board has final authority with respect to accepting or rejecting continuing education activities for credit.

4. The board may disallow claimed credit. If the board disallows any continuing education hours, the architect shall have 60 days from notice of such disallowance either to provide further evidence of having completed the continuing education hours disallowed or to remedy the disallowance by completing the required number of continuing education hours (but such continuing education hours shall not again be used for the next calendar year). If the board finds, after proper notice and hearing, that the architect willfully disregarded these requirements or falsified documentation of required continuing education hours, the architect may be subject to disciplinary action in accordance with the board regulations.

5. Documentation of reported continuing education hours shall be maintained by the architect for six years from the date of award.

**H. Pre-Approval of Programs**

1. Upon written request, the board will review a continuing education program prior to its presentation provided all of the necessary information to do so is submitted in accordance with these rules. If the program satisfies the requirements of these rules, the board will pre-approve same.

2. A person seeking to obtain pre-approval of a continuing education program shall submit the following information:

- a. program sponsor(s): name(s), address(es), and phone number(s);
- b. program description: name, detailed description, length of instructional periods, and total hours for which credit is sought;
- c. approved seminar topic: division(s) and topic(s) from the current list of approved seminar topics;
- d. program instructor(s)/leader(s): name(s) of instructor(s)/ leader(s) and credential(s);

- e. time and place: date and location of program; and
- f. certification of attendance: sponsor's method for providing evidence of attendance to attendees.

3. Such information shall be submitted at least 30 calendar days in advance of the program so that the board may analyze and respond.

4. The sponsor of a pre-approved program may announce or indicate as follows:

"This course has been approved by the Louisiana State Board of Architectural Examiners for a maximum of \_\_\_\_\_ Continuing Education Hours."

**I. Continuing Education Disciplinary Guidelines**

1. The board sets forth below the normal discipline which will be imposed upon an architect who fails to fulfill the continuing education requirements required by the licensing law and these rules. The purpose of these guidelines is to give notice to architects of the discipline which will normally be imposed. In a particular case, the discipline imposed may be increased or decreased depending upon aggravating or mitigating factors.

2. Absent aggravating or mitigating circumstances, the following discipline shall be imposed for the following violations:

<b>Violation</b>	<b>Discipline</b>
1. Architect has hours but lacks in accepted setting or subject matter	Architect will be allowed 60 days to obtain needed hours. Architect will be audited next year.
2. Architect signs renewal, has obtained some, but not all, hours needed as of December 31  For a second offense within 5 years	Fine of \$750, and architect must obtain required hours before renewing. Architect will be audited annually next three years.  Fine of \$1,500, architect's license suspended for six months, and architect must obtain required hours before renewing. Architect will be audited annually next three years.
3. Architect signs renewal; architect has not obtained any continuing education hours and fails to do so within sixty (60) days.	Fine up to \$5,000, and architect's license suspended until architect obtains necessary hours. Architect will be audited annually the next five years.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:144.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Board of Architectural Examiners LR 29:565 (April 2003), amended LR 37:

**Family Impact Statement**

The proposed rules have no known impact on family formation, stability, or autonomy, as described in R.S. 40:972.

**Public Comments**

Interested persons may submit written comments on this proposed rule amendment by close of business December 31, 2011 to Ms. Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, LA 70809.

Mary "Teeny" Simmons  
Executive Director



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

**RULE TITLE: Continuing Education**

**Title 55  
PUBLIC SAFETY**

**Part XXII. Intrastate Mutual Aid Compact**

**Chapter 1. General Provisions**

**§101. Overview**

A. Act 1035 of the 2010 Regular Legislative Session, effective on August 15, 2010, established the Intrastate Mutual Aid Compact, effective for any and all parishes in the state, to provide and promote mutual assistance among the parishes in the prevention of, response to, and recovery from, an emergency or disaster, as defined in R.S. 29:723, occurring in a parish, or any other event that exceeds a parish's capability or resources and provides for mutual cooperation among the parishes in conducting disaster related exercises, testing, or other training activities outside actual emergency periods.

B. The Intrastate Mutual Aid Compact does not mandate that a parish provide assistance when requested, nor does it preclude parishes from entering into supplemental agreements with other parishes pursuant to R.S. 29:730 and 730.1 and does not affect any other agreement to which a parish may currently be a party, or decide to be a party.

C. Revised Statutes 29:739(D) added by Act 1035 of the 2010 Regular Legislative Session, effective August 15, 2010, established the Intrastate Mutual Aid Subcommittee whose responsibility it will be to:

1. review the progress and status of providing statewide mutual aid in times of disaster;
2. assist in developing methods to track and evaluate the activation of the mutual aid system; and
3. examine issues facing participating parishes regarding the implementation of this compact.
4. prepare an annual report on the condition and effectiveness of mutual aid in the state, make recommendations for correcting any deficiencies, and submit that report to the governor and the Joint House and Senate Select Committees on Homeland Security by January thirty-first of each year.

5. The subcommittee shall make recommendations to the Governor's Office of Homeland Security and Emergency Preparedness on comprehensive guidelines and procedures including but not limited to the following:

- a. projected or anticipated costs;
- b. checklists for requesting and providing assistance;
- c. recordkeeping for all parishes;
- d. reimbursement procedures;
- e. changes in legislation or policy to better facilitate the mutual aid process; and
- f. any necessary implementation elements such as forms for requests and other records documenting deployment and return of assets.

D. Revised Statutes 29:739(E)(3) added by Act 1035 of the 2010 Regular Legislative Session, effective August 15, 2010, requires the Governor's Office of Homeland Security and Emergency Preparedness, in coordination with the Intrastate Mutual Aid Subcommittee, to develop guidance and procedures governing the implementation of the Intrastate Mutual Aid Compact in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

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

There are no implementation costs or savings to state or local governmental units as a result of the proposed rule change.

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 as a result of the proposed rule change.

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

The proposed rule changes are clarifications of existing rules and will make the Louisiana continuing architectural education rules uniform with the rules for continuing architectural education throughout the country.

Additionally, the proposed rule changes will no longer allow credit for Individually Planned Educational Activities, will no longer allow architects to carry forward unused continuing education hours to a future calendar year, will require that an architect remedy any disallowance of continuing education hours within sixty (60) days from notice of disallowance, and will establish continuing education disciplinary guidelines. Thus, the proposed rule change may result in some minimal economic costs to some architects depending upon his or her particular situation. However, any such costs can be avoided by following the requirements of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition or employment. All architects, whether resident or non-resident, will be subject to the same requirements.

Mary "Teeny" Simmons  
Executive Director  
1111#027

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Governor's Office of Homeland  
Security and Emergency Preparedness**

Intrastate Mutual Aid Compact  
(LAC 55:XXII.Chapter 1 and 3)

Under the authority of The Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the director gives notice that rulemaking procedures have been initiated to adopt LAC 55:XXII.Chapter 1 and 3 (Intrastate Mutual Aid Compact).

The proposed Rule applies to Intrastate Mutual Aid between parishes in the prevention of, response to, and recovery from, an emergency or disaster. The Rule will provide guidelines and procedures implementing effective mutual aid in the state and provide for responsibilities of requesting and assisting parishes with respect to limitations, reimbursement and insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 38:

### §103. Purpose and Scope

A. The purpose of these regulations is:

1. to establish an agreement for providing governmental services and resources in preparation for, response to and recovery from any disaster resulting in a formal declaration of emergency; and

2. to provide an easily accessible source of information on procedures used during the Intrastate Mutual Aid Compact process.

B. The scope of these regulations is:

1. a simple and efficient structure for requesting and receiving disaster assistance from other participating parishes;

2. resolution of potential legal and administrative issues in advance of a disaster; and

3. a tool to strengthen mutual aid resources across Louisiana by strengthening local government's capacity to respond to a disaster.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 38:

### §105. Definitions

*IMAC*—Intrastate Mutual Aid Compact

*First Responder*—those individuals who in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in Section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as well as emergency management, public health, clinical care, public works, and other skilled support personnel, such as equipment operators that provide immediate support services during prevention, response, and recovery operations consistent with Homeland Security Presidential Directive 8.

*Requesting Parish*—any parish in the state of Louisiana that has informally or formally requested Intrastate Mutual Aid Compact assistance.

*Assisting Parish*—any parish in the state of Louisiana that is providing an Intrastate Mutual Aid Compact requested resource.

*Authorized Representative*—person designated by the chief executive of the parish to obligate resources and expend funds on behalf of the parish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 38:

## Chapter 3. Limitations, Implementation, and Reimbursement

### §301. Limitations

A. A parish's obligation to provide assistance in preparation for, response to or recovery from a disaster shall be subject to the following conditions:

1. first responders of a responding parish shall remain subject to recall by their responding jurisdiction, will continue to utilize customary skills, techniques, standard

operating procedures to include medical procedures and protocols, and other procedures and protocols;

2. first responders shall be under the direction and control of the appropriate officials within the incident management system of the parish receiving the assistance; and

3. assets and equipment of a responding parish shall remain subject to recall by their responding jurisdiction, but shall be under the direction and control of the appropriate officials within the incident management system of the parish receiving the assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 38:

### §303. Implementation

A. Responsibilities of a requesting parish include:

1. parish state of emergency declaration prior to requesting assistance;

2. documenting of process from declaration through reimbursement;

3. utilizing State Emergency Management process for requesting resources;

4. adhering to guidelines set forth in the National Incident Management System; and

5. participating in After Action Review and implementing corrective actions.

B. Responsibilities of an assisting parish include:

1. verifying the details of the request for assistance;

2. ensuring receipt of proper authorization from requesting parish prior to deployment;

3. utilizing State Emergency Management process for requesting resources;

4. adhering to guidelines set forth in the National Incident Management System; and

5. participating in After Action Review and implementing corrective actions.

C. Responsibilities of the State of Louisiana:

1. overseeing and maintaining the State Emergency Management process in order to facilitate the IMAC process; and

2. maintaining updated parish authorized representative listing.

D. By officially executing the IMAC request, the authorized representatives from both the assisting parish and requesting parish will have, in effect, entered into a contract to provide and to reimburse for services to be rendered under the Intrastate Mutual Aid Compact.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness LR 38:

### §305. Reimbursement

A. Intrastate Mutual Aid Compact response shall not depend on assistance that may result from a State or Federal disaster declaration.

B. With a letter to the requesting parish, assisting parishes may donate mutual aid or assume partial or total costs associated with loss, damage or use of personnel, equipment and/or resources while providing mutual aid through an IMAC request.

C. Reimbursement shall not be:

1. provided to those assisting parishes that document the donation of their services or assume any costs while providing IMAC assistance;

2. available for costs incurred when mutual aid assistance has been provided to a parish that does not have a formal declaration of emergency;

3. for costs associated with Worker Compensation claims or death benefits to injured assisting parish responders, other than the portion of the responder's agreed-upon daily cost rate ordinarily attributable to "benefits";

4. in duplication of other payment and insurance proceeds;

5. provided for costs and expenses incurred that cannot be supported by documentation;

6. provided to assisting parishes that have self-deployed without a formal request from a requesting parish; or

7. provided for ineligible costs including:

a. the value of volunteer labor or paid labor that is provided at no cost;

b. administration of IMAC resources; and

c. training, exercise or on-the-job training.

D. Responsibilities of a requesting parish include:

1. review and agreement to estimated daily costs of resources offered by an assisting parish prior to deployment of those resources;

2. coordination of requests for reimbursement from assisting parish through the authorized representatives;

3. maintaining financial records in compliance with the State or local retention guidance;

4. ensure a state of emergency was issued by the parish;

5. maintaining and making available all appropriate documentation; and

E. Responsibilities of an assisting parish include:

1. providing estimated daily costs of resources requested by the requesting parish prior to deployment of resources;

2. using Intrastate Mutual Aid Compact reimbursement procedures, seek reimbursement through the authorized representative for expenses associated with resources provided in response to an IMAC request;

3. providing accurate and complete request for reimbursement to the requesting parish authorized representative within 30 days from demobilization;

4. maintaining original documents that support request for reimbursement in accordance with applicable Record Retention guidance; and

5. providing a written request for a time extension through the authorized representative if a reimbursement request cannot be completed within the 30 day timeframe.

F. Responsibilities of the State of Louisiana:

1. providing technical assistance should a requesting parish seek reimbursement for mutual aid provided by an assisting parish;

G. Revised Statutes 29:739(H) added by Act 1035 of the 2010 Regular Legislative Session, effective August 15, 2010, provides that personnel authorized by their employer

to respond to an event who sustain injury or death in the course and scope of their employment remain entitled to all applicable benefits normally available pursuant to their employment even though they may be under the direction and control of another governmental entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 38:

**Family Impact Statement**

It is anticipated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed action.

**Small Business Statement**

It is anticipated that the proposed action will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act (R.S. 49:965.2 et seq.). The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

**Public Comments**

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Maryann Tumino, Governor's Office of Homeland Security and Emergency Preparedness, 7667 Independence Boulevard, Baton Rouge, LA 70806. Email submissions are to be sent to Maryann.Tumino@la.gov and fax submissions are to be sent to 225-925-7501, and must be received no later than 4 p.m. on December 31, 2011. No preamble regarding these proposed regulations is available.

Pat Santos

Interim Director

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

**RULE TITLE: Intrastate Mutual Aid Compact**

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

The proposed administrative rules may result in an indeterminable amount of savings to state and local governmental entities. The proposed administrative rules apply to Intrastate Mutual Aid between parishes in the prevention of, response to, and recovery from, an emergency or disaster. The proposed administrative rule provides guidelines and procedures for implementing effective mutual aid in the state and provide for responsibilities of requesting and assisting parishes with respect to limitations, reimbursement and insurance. Intrastate mutual aid enables a parish in need to utilize necessary resource from another parish before requesting state resources.

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

There is no anticipated direct material effect on state or local government revenues as a result of the proposed administrative rules.

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

There is no anticipated direct material effect on costs and/or economic benefits to directly affected persons or nongovernmental groups as a result of the proposed administrative rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct material effect on competition and employment as a result of the proposed administrative rules.

Pat Santos  
Interim Director  
1111#039

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Nursing**

Denial or Delay of Licensure (LAC 46:XLVII.3331)

The Louisiana State Board of Nursing proposes to amend LAC 46:XLVII.3331, Denial or Delay of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse [Proposed Reenactment] in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The proposed reenactment to LAC 46:XLVII.3331 expands grounds for denial or delay of licensure, reinstatement, or the right to practice as a student nurse. Current rules only provide grounds for denial based on a crime of violence and crimes involving the distribution of drugs. This current proposal would deny applicants based on crimes of violence, sex offenses, crimes involving the distribution of drugs with the addition of drug crimes involving manufacture and production of drugs. This Rule would also deny applicants convicted of certain felony property crimes.

The proposed reenactment includes grounds for denial for a minimum of five years following the final disposition of the criminal case for any other felonies or for two or more misdemeanor crimes which reflect an inability to practice nursing safely. Additionally, applicants will be denied for a minimum of five years following a misdemeanor conviction and the existence of aggravating circumstances including but not limited to ongoing substance abuse.

Finally, the grounds for delay of an applicant has been increased to include recent diagnosis or treatment for substance use disorders.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS  
Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**Subchapter C. Registration and Registered Nurse  
Licensure**

**§3331. Denial or Delay of Licensure, Licensure by  
Endorsement, Reinstatement, or the Right to  
Practice Nursing as a Student Nurse**

A. Denial of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse

1. Applicants for licensure, licensure by endorsement, reinstatement, or the right to practice as a student nurse shall be denied approval for licensure, for reinstatement, to receive a temporary working permit, to be eligible for NCLEX-RN, or to enter or progress into any clinical nursing course, if the applicant has pled guilty, nolo contendere, or "best interest of" to, or the equivalent thereto in jurisdictions other than Louisiana, or has been convicted of committing, attempting to commit, or conspiring to commit:

a. a *crime of violence* as defined in R.S. 14:2 or any of the following crimes:

- i. R.S. 14:32.6, First degree feticide;
- ii. R.S. 14:37, Second degree feticide;
- iii. R.S. 14:46.1, False-imprisonment-offender armed with a dangerous weapon;
- iv. R.S. 14:93.2.3, Second degree cruelty to juveniles;
- v. R.S. 14:93.3, Cruelty to the infirmed;
- vi. R.S. 14:102, Cruelty to animals; or
- vii. an equivalent crime in jurisdictions other than Louisiana; or

b. a crime involving the production, manufacturing, distribution or dispensing of a controlled dangerous substance as provided for and defined in R.S. 40:961 through 40:995, otherwise referred to as the Uniform Controlled Dangerous Substances Law, or an equivalent crime in jurisdictions other than Louisiana; or

c. a crime designated as a "sex offense," "aggravated offense," or "sexual offense against a victim who is a minor" as set forth in R.S. 15:540 et seq.; or an equivalent crime in jurisdictions other than Louisiana; or

d. any of the following misappropriation crimes:

- i. R.S. 14:67.3, Unauthorized use of "access card";
- ii. R.S. 14:67.11, Credit card fraud;
- iii. R.S. 14:67.16, Identity theft;
- iv. R.S. 14:67.21, Theft of assets of an aged person or disabled person;
- v. R.S. 14:67.22, Fraudulent acquisition of a credit card;
- vi. R.S. 14:68.2, Unauthorized use of food stamps;
- vii. R.S. 14:70.1, Medicaid fraud;

- viii. R.S. 14:70.4, Access device fraud;
- ix. R.S. 14:71.1, Bank fraud; or
- x. an equivalent crime in jurisdictions other than Louisiana.

2. For purposes of this Section, a pardon, suspension of imposition of sentence, expungement, or similar action shall not negate or diminish the applicability of this Section.

3. Applicants who are denied licensure, licensure by endorsement, reinstatement, or the right to practice nursing as a student nurse pursuant to this Section shall not be eligible to submit a new application.

4. These provisions of this section shall not apply to the reinstatement of a license that has been suspended or surrendered as a result of disciplinary action taken against a licensee by the board or which reinstatement would otherwise be subject to the provisions of LAC 46:XLVII.3415.

**B. Denial of Licensure, Reinstatement, or the Right to Practice Nursing as a Student Nurse for a Minimum of Five Years**

1. Applicants for licensure, licensure by endorsement, reinstatement, or the right to practice as a student nurse shall be denied approval for licensure, for reinstatement, to receive a temporary working permit, to be eligible for NCLEX-RN, or to enter or progress into any clinical nursing course for a minimum of five years, if the applicant has pled guilty, nolo contendere, or "best interest of" to, or the equivalent thereto in jurisdictions other than Louisiana, or has been convicted of committing, attempting to commit, or conspiring to commit:

a. a felonious crime which reflects an inability to practice nursing safely with due regard for the health and safety of clients or patients not previously mentioned or related to the aforementioned Paragraph A.1-A.1.d of this Section;

b. two or more misdemeanor crimes which reflect an inability to practice nursing safely with due regard for the health and safety of clients or patients, including but not limited to:

- i. R.S. 14: 35, Simple battery;
- ii. R.S. 14:37, Aggravated assault;
- iii. R.S. 14: 43, Sexual battery;
- iv. R.S. 14:59, Criminal Mischief;
- v. R.S. 14:63.3, Entry on or remaining in places after being forbidden;
- vi. R.S. 14:83, Soliciting for prostitutes; or
- vii. any crimes related to alcohol or drugs.

c. a misdemeanor crime which reflects an inability to practice nursing safely with due regard for the health and safety of clients or patients where there also exist aggravating circumstances, including but not limited to ongoing substance abuse, discovered as part of the investigation.

2. Applicants who are denied licensure, licensure by endorsement, reinstatement, or the right to practice nursing as a student nurse as set forth in Paragraph B.1 of this Section shall not be eligible to submit a new application until the following conditions are met:

a. the applicant presents evidence that i) five years have elapsed since the final disposition of the criminal case involving applicant including, if applicable, the completion of all court ordered probation and/or parole; community

supervision, restitution; and ii) that the applicant can practice nursing safely. The evidence may include, but not be limited to, certified court documents, comprehensive evaluations by board approved evaluators, employer references, and other evidence of rehabilitation. Prior to requesting a board hearing, all evidence that applicant desires to be considered shall be presented to board staff; and

b. a hearing or conference is held before the board or board staff to review the evidence, to afford the applicant the opportunity to prove that the cause for the denial no longer exists, and to provide an opportunity for the board to evaluate the evidence presented and determine whether a new application can be submitted and considered without being subject to the mandatory delay provisions of Paragraph B.1 of this Section when no new grounds for such delay exist.

**C. Delay of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse**

1. Applicants for licensure, licensure by endorsement, reinstatement, and for practice as a student nurse shall be delayed approval for licensure, for reinstatement, to receive a temporary working permit, to be eligible for NCLEX-RN, or to enter or progress into any clinical nursing course, if the applicant:

a. has a pending criminal charge that involves any violence or danger to another person, or involves a crime which constitutes a threat to patient care, or one that involves drug possession, use, production, manufacturing, distribution or dispensing; or

b. has any pending disciplinary action or any restrictions of any form by any licensing/certifying board in any state; or

c. has pled guilty, nolo contendere, "best interest of" to, or the equivalent thereto in jurisdictions other than Louisiana, or has been convicted of committing, attempting to commit, or conspiring to commit, or allowed to participate in a pretrial diversion program in lieu of prosecution for, a crime that does not constitute grounds for denial but that reflects the inability of the person to practice nursing safely, and the conditions of the court or the pretrial diversion program have not been met, or is currently serving a court ordered probation or parole; or

d. has been diagnosed with or treated for a physical or mental infirmity that interferes with or affects the ability of the person to practice nursing safely;

e. has been diagnosed with or treated for substance dependence or substance use disorders.

2. Applicants who are delayed licensure, licensure by endorsement, reinstatement, or the right to practice nursing as a student nurse shall not be eligible to submit a new application until the following conditions are met:

a. if delay is based on the existence of a pending criminal charge, applicant must present evidence that the charge has been dismissed including, but not limited to, documents indicating that the dismissal was predicated on completion of pretrial diversion program or completion of conditions imposed for consideration of suspension of sentence under C.Cr.P. Article 893 or 894 or their equivalent in jurisdictions other than Louisiana; or

i. if the charge results in a felony conviction, other than for the commission of a crime that would

constitute grounds for denial of the application, applicant must present evidence that five years have elapsed since the final disposition of the criminal case involving applicant including, if applicable, the completion of all court ordered probation and/or parole;

ii. if the charge results in a misdemeanor conviction, other than for the commission of a crime that would constitute grounds for denial of the application, applicant must present evidence of the final disposition of the criminal case including, if applicable, the completion of all court ordered probation and/or parole;

b. if delay is based on pending disciplinary action, applicant must present evidence of unencumbered license(s) or certification from all affected jurisdictions that the matter has been satisfactorily resolved; or

c. if delay is based on the existence of a physical or mental infirmity, applicant must present comprehensive psychological, psychiatric, chemical dependency and/or other appropriate medical evaluations completed with Board approved evaluators, which may include, but not be limited to, forensic evaluations with polygraph examination, that evidence the ability of the applicant to practice nursing safely;

d. if delay is based on the existence of a substance use disorder or dependency and/or treatment for dependency, applicant must demonstrate a minimum of two years of documented sobriety and successful completion of all treatment recommendations;

e. a hearing or conference is held before the board to review the evidence, to afford applicant the opportunity to prove that the cause for the delay no longer exists, and to provide an opportunity for the board to evaluate the evidence presented and determine whether a new application can be submitted and considered without being subject to the mandatory delay provisions of Paragraph B.1 of this Section when no new grounds for such delay exist.

3. The provisions of this section shall not apply to the reinstatement of a license that has been suspended or surrendered as a result of disciplinary action taken against a licensee by the board or which reinstatement would otherwise be subject to the provisions of LAC 46:XLVII.3415.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, 920 and 921.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 23:961 (August 1997), repromulgated LR 24:1293 (July 1998), amended LR 27:202 (February 2001), LR 38:

#### **Family Impact Statement**

In compliance with R.S. 49:953 and 974, the following Family Impact Statement of the proposed amendments to rules is provided. There should be no adverse effect on the stability of the family; the authority and rights of parents regarding the education and supervision of their children; or the ability of the family or a local government to perform the function as contained in the proposed Rule amendments.

#### **Public Comments**

Interested persons may submit written comments on the proposed Rule until 5 p.m., December 10, 2011 to Barbara

L. Morvant, Executive Director, 17373 Perkins Road, Baton Rouge, LA 70810.

Barbara L. Morvant, MN, RN  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Denial or Delay of Licensure**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated cost to publish in the Register will be \$300. The proposed revisions will mainly expand the felony crimes for which an applicant for licensure, the right to practice as a student nurse, or reinstatement of licensure shall be denied. This revision will primarily affect student nurses. In 2010, the LSBN investigated 1,040 student nurses. Thus, student nurses comprised 42.8 % of all investigations conducted by the LSBN. The implementation of the revised rules is not expected to have a significant impact on the number of total investigations since 20-30 % of all applicants have a criminal history. Although this rule may prevent those with certain felony convictions from applying, the majority of applicants has pled to lesser charges and will require investigation. Therefore, no other costs or savings are anticipated for the LSBN with this change.

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

This rule is not anticipated to affect revenue collections. Specifically, application fees will still be collected on every application that is submitted.

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

Once adopted, prospective students, applicants for licensure and applicants for reinstatement of licensure will be able to review the rules to determine if their criminal histories will preclude their ability to pursue a career in nursing, obtain licensure or reinstate a license that is no longer active. For the student considering a career in nursing, this will allow the student to choose another career before spending time and resources pursuing pre-requisite nursing courses. Therefore, the rules will have an indirect savings of time and money for those prospective students not eligible for entry into clinical practice or licensure. An unknown number of student applicants may apply despite not meeting eligibility for clinical practice, and those students would forfeit their \$20 application fee and a \$45.25 criminal background check fee. An unknown number of applicants for licensure or reinstatement of licensure may forfeit their \$100 application fee and a \$45.25 criminal background check fee. However, based on current numbers of applicants who apply with these very serious crimes, the number of individuals forfeiting application fees as a result of this rule expansion is expected to be minimal.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The full effect on competition and employment is unknown; however, applicants for licensure, reinstatement, or the right to practice nursing as a student nurse with the type of felonies resulting in denial is less than 1 % of total applicants. Therefore, the effect on competition and employment will be negligible. Also, Louisiana schools of nursing turn away an average of 1,350 qualified applicants per year. This rule

revision will assist a few individuals without a serious criminal history to take these competitive spots in nursing school.

Barbara L. Morvan, MN, RN  
Executive Director  
1111#033

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

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

Adult Behavioral Health Services  
(LAC 50:XXXIII.Chapters 61-67)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 61-67 in the Medical Assistance Program, and upon implementation of this comprehensive system of delivery for behavioral health services, the bureau hereby repeals LAC 50:XV.Chapters 1-13 governing mental health rehabilitation services and LAC 50:XI.Chapter 17 governing mental health clinics 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized services for a select group of high risk children and adolescents. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide behavioral health services to adults with serious and persistent mental illness or co-occurring disorders of mental illness. Adults who currently receive behavioral health services through the Office of Behavioral Health, which are paid solely from state general funds, will now receive the same benefit package through a Section 1915(i) State Plan option which will allow

the Medicaid Program to leverage those same state funds in order to secure federal match for the costs associated with the provision of these services. Medicaid coverage of adult behavioral health services will reduce the department's reliance on all state general funds for the provision of these services and will secure federal funding for these much needed services.

## Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXXIII. Behavioral Health Services

#### Subpart 7. Adult Mental Health Services

### Chapter 61. General Provisions

#### §6101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to adults with behavioral health disorders. These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health in collaboration with a statewide management organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The behavioral health services rendered to adults shall be necessary to reduce the disability resulting from behavioral health illness and to restore the individual to his/her best possible functioning level in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### §6103. Recipient Qualifications

A. Individuals over the age of 21, who meet Medicaid eligibility and clinical criteria established in §6103.B, shall qualify to receive adult behavioral health services.

B. Qualifying individuals who meet one of the following criteria shall be eligible to receive adult behavioral health services.

##### 1. Person with Acute Stabilization Needs

a. The person currently presents with mental health symptoms that are consistent with a diagnosable mental disorder specified within the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) or the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM), or subsequent revisions of these documents.

b. The person is experiencing at least "moderate" levels of risk to self or others as evidenced by at least a score of 3 and no more than a score of 4 on the Level-of-Care Utilization System (LOCUS) Risk of Harm subscale and/or serious or severe levels of functional impairment as evidenced by at least a score of 4 on the LOCUS Functional Status subscale. This rating is made based on current manifestation and not past history.

##### 2. Person with Major Mental Disorder (MMD)

a. The person has at least one diagnosable mental disorder which is commonly associated with higher levels of impairment. These diagnoses may include:

- i. psychotic disorders;
- ii. bipolar disorders; or
- iii. depression.

b. The person experiences at least moderate levels of need as indicated by at least a composite LOCUS total

score of 14 to 16, indicative of a low intensity community-based services level-of-care.

c. A person with a primary diagnosis of a substance abuse disorder without an additional co-occurring Axis I disorder shall not meet the criteria for a major mental disorder diagnosis.

3. Persons with Serious Mental Illness (SMI)

a. The person currently has, or at any time during the past year, had a diagnosable Axis I mental disorder of sufficient duration to meet the diagnostic criteria specified within the DSM-IV-TR or the ICD-10-CM, or subsequent revisions of these documents.

b. The person is experiencing moderate levels of need as indicated by at least a composite LOCUS total score of 17 to 19, indicative of at least a high intensity community-based services level-of-care.

c. A person with a primary diagnosis of a substance abuse disorder without an additional co-occurring Axis I disorder shall not meet the criteria for a SMI diagnosis.

4. An adult who has previously met the criteria stated in §6103.B.1-3 and needs subsequent medically necessary services for stabilization and maintenance.

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 38:

### **Chapter 63. Services**

#### **§6301. General Provisions**

A. All behavioral health services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health practitioner or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services shall be prior authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. There shall be recipient involvement throughout the planning and delivery of services. Services shall be appropriate for:

1. age;
2. development;
3. education; and
4. culture.

D. Anyone providing behavioral health services must be certified by the department in addition to operating within their scope of practice license.

E. Evidence-based practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by department.

F. Services may be provided at a site-based facility, in the community, or in the individual's place of residence as outlined in the plan of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6303. Assessments**

A. Each recipient shall undergo an independent assessment prior to receiving behavioral health services. The individual performing the assessment, eligibility, and plan of care shall not be a provider of services in the plan of care.

B. All assessments shall be based upon department designated assessment criteria and in accordance with the

provisions of this Rule, the provider manual and other notices or directives issued by the department.

C. The assessments shall be conducted by a case manager who is a physician or licensed mental health practitioner (LMHP) (in consultation with a psychiatrist who must complete portions of the assessment) who is trained to administer the evaluation and operating within their scope of license, and who is annually recertified.

D. The evaluation and re-evaluation must be finalized through the SMO using the universal needs assessment criteria and qualified SMO personnel.

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 38:

#### **§6305. Plan of Care**

A. Each individual who receives adult behavioral health services shall have a plan of care (POC) developed based upon the independent assessment.

B. The individualized plan of care shall be developed according to the criteria established by the department and in accordance with the provisions of this Rule, the provider manual and other notices or directives issued by the department.

1. The POC is reviewed at least every 12 months and as needed when there is significant change in the individual's circumstances.

C. The plan of care shall be developed by a case manager who acts as an advocate for the individual and is a source of information for the individual and the team. The case manager shall be a physician or an LMHP.

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 38:

#### **§6307. Covered Services**

A. The following behavioral health services shall be reimbursed under the Medicaid Program:

1. therapeutic services, including diagnosis and treatment;
2. rehabilitation services, including community psychiatric support and treatment (CPST) and psychosocial rehabilitation; and
3. crisis intervention services.

##### **B. Service Limitations**

1. Psychosocial rehabilitation is limited to 750 hours of group services per calendar year. Hours in excess of 750 may be authorized when deemed medically necessary.

2. Emergent crisis intervention services are limited to six hours per episode. Ongoing crisis intervention services are limited to 66 hours per episode.

C. Service Exclusions. The following services shall be excluded from Medicaid reimbursement:

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual;
2. services provided at a work site which are job tasks oriented and not directly related to the treatment of the recipient's needs;
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving substance abuse services; and



4. services rendered in an institute for mental disease.

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 38:

#### **Chapter 65. Provider Participation**

##### **§6501. Provider Responsibilities**

A. Each provider of behavioral health services shall enter into a contract with the statewide management organization in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department.

C. Providers of behavioral health services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing behavioral health services must be certified by the department in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. Providers shall maintain case records that include, at a minimum:

1. a copy of the treatment plan;
  2. the name of the individual;
  3. the dates of service;
  4. the nature, content and units of services provided;
  5. the progress made toward functional improvement;
- and
6. the goals of the treatment plan.

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 38:

#### **Chapter 67. Reimbursement**

##### **§6701. Reimbursement Methodology**

A. The department, or its fiscal intermediary, shall make monthly capitation payments to the SMO. Payments shall be developed and based upon the fee-for-service reimbursement methodology currently established for the covered services.

B. The capitation rates paid to the SMO shall be actuarially sound rates and the SMO will determine the rates paid to its contracted 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, LR 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

##### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

##### **RULE TITLE: Adult Behavioral Health Services**

##### **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 state general fund programmatic costs of \$8,794,995 for FY 11-12, \$27,042,429 for FY 12-13 and \$28,124,126 for FY 13-14. It is anticipated that \$2,706 (\$1,353 SGF and \$1,353 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$19,888,866 for FY 11-12, \$62,442,775 for FY 12-13 and \$64,940,486 for FY 13-14. It is anticipated that \$1,353 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide behavioral health services to adults with serious and persistent mental illness or co-occurring disorders of mental illness (approximately 267,693 eligibles). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program

by approximately \$28,681,155 for FY 11-12, \$89,485,204 for FY 12-13 and \$93,064,612 for FY 13-14.

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 and employment.

Don Gregory  
Medicaid Director  
1111#060

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Behavioral Health Services  
Statewide Management Organization  
(LAC 50:XXXIII.Chapters 1-9)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 1-9 in 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery mechanisms by developing and implementing a comprehensive system for behavioral health services that will be a coordinated system of care. The comprehensive system of behavioral health services is designed to provide an array of Medicaid State Plan and home and community-based waiver services to eligible children, youth and adults in need of behavioral health and substance abuse services. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide services through the utilization of a statewide management organization that will be responsible for the necessary administrative and operational functions to ensure adequate coordination and delivery of behavioral health services.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXXIII. Behavioral Health Services**

**Subpart 1. Statewide Management Organization**

**Chapter 1. General Provisions**

**§101. Introduction**

A. The Medicaid Program hereby adopts provisions to establish a comprehensive system of delivery for behavioral health services as part of the Louisiana Behavioral Health Partnership initiative. These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health, in collaboration with a Statewide Management Organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The provisions of this Rule shall apply only to the behavioral health services provided to Medicaid recipients/enrollees by or through the SMO.

C. A statewide management organization shall operate as a prepaid inpatient healthcare plan (PIHP/SMO) procured through a competitive request for proposal (RFP) process. The PIHP/SMO shall assist with the state's system reform goals to support individuals with behavioral health needs in families, homes, communities, schools, and jobs.

D. Through the utilization of a SMO, it is the department's goal to:

1. increase access to a broad array of evidence-based home and community-based services that promote hope, recovery and resilience;
2. improve quality by establishing and measuring outcomes;
3. manage costs through effective utilization of State, federal, and local resources; and
4. foster reliance on natural supports that sustain individuals and families in homes and communities.

E. The PIHP/SMO shall be paid on a non-risk basis for children's services, for individuals with retroactive eligibility, and for individuals in the Spend-Down Medically Needy Program. The PIHP/SMO shall be paid on a risk basis for adult 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, Bureau of Health Services Financing, LR 38:

**§103. Recipient Participation**

A. The following Medicaid recipients shall be mandatory participants in the coordinated behavioral health system of care:

1. Section 1931 Children and Related Populations. These are children eligible under §1931 of the Social Security Act, poverty-level related groups and optional groups of older children;
2. Section 1931 Adults and Related Populations. These are adults eligible under §1931 of the Social Security Act, poverty-level pregnant women and optional groups of caretaker relatives;
3. adults who are blind or have a disability and related populations, age 18 and over;
4. children who are blind or have a disability and related populations, under age 18;

5. aged and related populations, age 65 and older who are not blind, do not have a disability, and are not members of the §1931 Adult Population;

6. children who receive foster care or adoption assistance (Title IV-E), or who are in foster care or who are otherwise in an out-of-home placement; and

7. Title XXI SCHIP (LaCHIP, LaCHIP Phase 2 and LaCHIP Phase 3) populations.

B. Mandatory participants shall be automatically enrolled and disenrollment from the PIHP/SMO is not permitted.

C. Notwithstanding the provisions of Subsection A of this Section, the following Medicaid recipients are excluded from enrollment in the PIHP/SMO:

1. recipients who receive both Medicare and Medicaid benefits;

2. recipients enrolled in the Medicare Beneficiary Programs (QMB, SLMB, QDWI and QI-1);

3. adults who reside in an intermediate care facility for persons with developmental disabilities (ICF/DD);

4. recipients of Refugee Cash Assistance;

5. recipients enrolled in the Regular Medically Needy Program;

6. recipients enrolled in the Tuberculosis Infected Individual Program;

7. recipients who receive emergency services only coverage;

8. recipients eligible through the LaCHIP Affordable Care Plan Program (Phase 5);

9. recipients who receive services through the Program of All-Inclusive Care for the Elderly (PACE);

10. recipients enrolled in the Low Income Subsidy Program;

11. participants in the TAKE CHARGE Family Planning Waiver; and

12. recipients enrolled in the LaMOMS 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, Bureau of Health Services Financing, LR 38:

### **§105. Enrollment Process**

A. The PIHP/SMO shall abide by all enrollment and disenrollment policies and procedures as outlined in the contract entered into by department and the SMO.

B. The PIHP/SMO shall ensure that mechanisms are implemented to assess each Medicaid enrollee identified as having special health care needs in order to identify any ongoing conditions that require a course of treatment or regular care monitoring. The assessment mechanism shall incorporate appropriate health care professionals.

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 38:

### **§107. Enrollee Rights and Responsibilities**

A. The PIHP/SMO enrollee's rights shall include, but are not limited to the right to:

1. participate in treatment decisions, including the right to:

a. refuse treatment;

b. seek second opinions; and

d. receive assistance with care coordination from the primary care providers (PCP's) office;

2. express a concern about their provider or the care rendered via a grievance process;

3. appeal a PIHP/SMO decision through the PIHP/SMO's internal process and/or the state fair hearing process;

4. receive a response about a grievance or appeal decision within a reasonable period of time;

5. receive a copy of his/her medical records;

6. be furnished health care services in accordance with federal regulations, including those governing access standards;

7. choose a participating network health care professional in accordance with federal and state regulations; and

8. be allowed to receive a specialized service outside of the network if a qualified provider is not available through the network.

B. The Medicaid recipient/enrollee's responsibilities shall include, but are not limited to:

1. informing the PIHP/SMO of the loss or theft of their Medicaid identification card;

2. presenting their identification card when accessing behavioral health services;

3. being familiar with the PIHP/SMO procedures to the best of his/her abilities;

4. contacting the PIHP/SMO, by telephone or in writing (formal letter or electronically, including email), to obtain information and have questions clarified;

5. providing participating network providers, or any other authorized provider, with accurate and complete medical information;

6. following the prescribed treatment of care recommended by the provider or letting the provider know the reasons the treatment cannot be followed, as soon as possible;

7. making every effort to keep any agreed upon appointments and follow-up appointments and contacting the provider in advance if unable to do so; and

8. accessing services only from specified providers contracted with the PIHP/SMO.

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 38:

## **Chapter 3. Statewide Management Organization Participation**

### **§301. Participation Requirements and Responsibilities**

A. In order to participate in the Medicaid Program, a statewide management organization shall execute a contract with the department, and shall comply with all of the terms and conditions set forth in the contract.

B. A PIHP/SMO shall:

1. manage behavioral health services for adults with substance abuse disorders as well as adults with functional behavioral health needs;

2. manage mental health and substance abuse care for all eligible children and youth in need of behavioral health care on a non-risk basis;

3. on a non-risk basis, implement a coordinated system of care for a subset of children and youth who are in, or at risk of, out-of-home placement;

a. This system will be phased in over the term of the contract;

4. establish credentialing and re-credentialing policies consistent with federal and state regulations;

5. ensure that provider selection policies and procedures do not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment;

6. maintain a written contract with subcontractors that specifies the activities and reporting responsibilities delegated to the subcontractor and such contract shall also provide for the PIHP/SMO's right to revoke said delegation, terminate the contract, or impose other sanctions if the subcontractor's performance is inadequate;

7. contract only with providers of behavioral health services who are licensed and/or certified and meet the state of Louisiana credentialing criteria;

8. ensure that contracted rehabilitation providers are employed by a rehabilitation agency, school or clinic licensed and/or certified, and authorized under state law to provide these services;

9. sub-contract with a sufficient number of providers to render necessary services to Medicaid recipients/enrollees;

10. require each provider to implement mechanisms to assess each Medicaid enrollee identified as having special health care needs in order to identify special conditions of the enrollee that require a course of treatment or regular care monitoring;

11. ensure that treatment plans meet the following requirements:

a. are developed by the enrollee's primary care provider (PCP) with the enrollee's participation and in consultation with any specialists' providing care to the enrollee with the exception of treatment plans developed for recipients in the Home and Community Based Services (HCBS) Waiver. The wraparound agency shall develop treatment plans for recipients who receive behavioral health services through the HCBS Waiver;

b. are approved by the PIHP/SMO in a timely manner, if required;

c. are in accordance with any applicable state quality assurance and utilization review standards; and

d. allow for direct access to any specialist for the enrollee's condition and identified needs, in accordance with the contract; and

12. ensure that Medicaid recipients/enrollees receive information:

a. in accordance with federal regulations and as described in the contract and departmental guidelines;

b. on available treatment options and alternatives in a manner appropriate to the enrollee's condition and ability to understand;

c. about available experimental treatments and clinical trials along with information on how such research can be accessed even though the Medicaid Program will not pay for the experimental treatment.

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 38:

### §303. Benefits and Services

A. The PIHP/SMO shall ensure that behavioral health benefits and services be furnished to Medicaid recipients/enrollees in an amount, duration and scope that

are at least equivalent to those furnished to enrollees under the Louisiana Medicaid State Plan. The benefits and services shall be provided to Medicaid recipients/enrollees as provided under the terms of the contract and department-issued guidelines.

B. The PIHP/SMO:

1. shall ensure that medically necessary behavioral health services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for which the services are being furnished;

2. may not arbitrarily deny or reduce the amount, duration, or scope of a required service because of diagnosis, type of illness, or condition of the member;

3. may place appropriate limits on a service:

a. on the basis of medical necessity; and

b. for the purpose of utilization control, provided the services furnished can reasonably be expected to achieve their purpose;

4. shall provide benefits and services as outlined and defined in the contract and shall provide medically necessary and appropriate care to Medicaid PIHP/SMO enrollees; and

C. The benefits and services provided to enrollees shall include, but are not limited to, those services specified in the contract between the PIHP/SMO and the department.

1. Policy transmittals, State Plan amendments, Rules and regulations, provider bulletins, provider manuals and fee schedules issued by the department are the final authority regarding 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, Bureau of Health Services Financing, LR 38:

### §305. Service Delivery

A. The PIHP/SMO shall ensure that behavioral health services rendered to enrollees are medically necessary, are authorized or coordinated by the PIHP/SMO, and are provided by mental health professionals according to their scope of practice and licensing in the state of Louisiana.

B. Access to emergency services and family-oriented services shall be assured within the network.

C. The PIHP/SMO shall be required to contract with at least one federally qualified health center (FQHC) in each medical practice region of the state (according to the practice patterns within the state) if there is an FQHC which can provide substance abuse or specialty mental health services under state law and to the extent that the FQHC meets the required provider qualifications.

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 38:

## Chapter 5. Reimbursement

### §501. Reimbursement Methodology

A. The department, or its fiscal intermediary, shall make actuarially sound monthly capitation payments to the PIHP/SMO on the basis of prepaid capitation payments or other payment arrangements that do not use fee-for-service payment rates.

B. The PIHP/SMO is paid on a risk basis for adult behavioral health services and is paid on a non-risk basis for all children's behavioral health services and any services to individuals with retroactive eligibility in the month the enrollee meets Medically Needy Spend-Down requirements.

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 38:

## **Chapter 7. Grievance and Appeals Process**

### **§701. General Provisions**

A. The PIHP/SMO shall be required to have an internal grievance system and internal appeal process which allows a Medicaid recipient/enrollee to challenge a decision made, a denial of coverage, or a denial of payment for services.

B. An enrollee, or a provider on behalf of an enrollee, must file an appeal within 30 calendar days from the date on the notice of action.

C. An enrollee must file a grievance within 180 calendar days of the occurrence or incident which is the basis for the grievance.

D. An enrollee must exhaust the PIHP/SMO grievance and appeal process before requesting a state fair hearing.

E. The PIHP/SMO shall provide Medicaid enrollees with information about the state fair hearing process within the timeframes established by the department and in accordance with the state fair hearing policies.

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 38:

## **Chapter 9. Monitoring Activities**

### **§901. General Provisions**

A. The contracted PIHP/SMO shall be accredited by the National Committee for Quality Assurance (NCQA) or the Utilization Review Accreditation Commission (URAC) or agrees to submit application for accreditation at the earliest possible date as allowed by NCQA or URAC. Once accreditation is achieved, it shall be maintained through the life of this agreement.

B. The PIHP/SMO shall be required to track grievances and appeals. Grievance and appeal data shall be included in quarterly QI reporting and are reviewed at least annually by the department or its designee.

C. The PIHP/SMO shall report demographic data, outcomes measures, utilization and special needs population (target population) data to the department through the required OBH database.

D. The PIHP/SMO shall submit documentation to the department to substantiate that it offers an appropriate range of services that is adequate for the anticipated number of enrollees and maintains a network of providers that is sufficient in number, mix and geographic distribution to meet the needs of enrollees.

E. The PIHP/SMO shall conduct Performance Improvement Projects (PIPs) that are designed to achieve, through on-going measurements and intervention, significant improvement, sustained over time, in clinical care and non-clinical care areas that are expected to have a favorable effect on health outcomes and enrollee satisfaction.

F. The PIHP/SMO shall annually report the number and types of Title XIX practitioners (by service type not facility or license type) relative to the number and types of Medicaid providers at the start date of the contract.

G. The PIHP/SMO shall be required to conduct statistically valid sample reviews.

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 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

### **RULE TITLE: Behavioral Health Services Statewide Management Organization**

#### **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 state general fund programmatic costs of \$2,124,141 for FY 11-12, \$6,780,438 for FY 12-13 and \$7,322,874 for FY 13-14. It is anticipated that \$1,886 (\$943 SGF and \$943 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$4,802,722 for FY 11-12, \$15,656,486 for FY 12-13 and \$16,909,004 for FY 13-14. It is anticipated that \$943 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide services through the utilization of a statewide management organization that will be responsible for the administrative and operational functions to ensure coordination and delivery of behavioral health services. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$6,924,977 for FY 11-12, \$22,436,924 for FY 12-13 and \$24,231,878 for FY 13-14.

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 and employment.

Don Gregory  
Medicaid Director  
1111#061

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Children's Behavioral Health Services  
(LAC 50:XXXIII.Chapters 21-27)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 21-27 in the Medical Assistance Program, and upon implementation of this comprehensive system of delivery for behavioral health services, the bureau hereby repeals LAC 50:XV.Chapters 251-259 governing multi-systemic therapy services 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized services for a select group of high risk children and adolescents. This comprehensive service delivery model is

being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide behavioral health services to children and youth.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXXIII. Behavioral Health Services**

**Subpart 3. Children's Mental Health Services**

**Chapter 21. General Provisions**

**§2101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for mental health services rendered to children and youth with behavioral health disorders. These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health in collaboration with a statewide management organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The behavioral health services rendered to children with emotional or behavioral disorders are those services necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§2103. Recipient Qualifications**

A. Individuals under the age of 21 with an identified mental health diagnosis, who meet Medicaid eligibility and clinical criteria, shall qualify to receive home and community-based behavioral health 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, Bureau of Health Services Financing, LR 38:

**Chapter 23. Services**

**§2301. General Provisions**

A. All behavioral health services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health practitioner (LMHP) or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services shall be prior authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody. Coordination with other child-serving systems should occur as needed to achieve the treatment goals. All coordination must be documented in the child's medical record.

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must request and approve the provision of services to the recipient.

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

1. age;
2. development;
3. education; and
4. culture.

E. Evidence-based practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by the department.

F. Services may be provided at a site-based facility, in the community or in the individual's place of residence as outlined in the plan of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§2303. Covered Services**

A. The following behavioral health services shall be reimbursed under the Medicaid Program:

1. therapeutic services, including diagnosis and treatment;
2. rehabilitation services, including community psychiatric support and treatment (CPST) and psychosocial rehabilitation; and
3. crisis intervention services.

#### **B. Service Limitations**

1. Psychosocial rehabilitation is limited to 750 hours of group services per calendar year. Hours in excess of 750 may be authorized when deemed medically necessary.

2. Emergent crisis intervention services are limited to six hours per episode. Ongoing crisis intervention services are limited to 66 hours per episode.

C. Service Exclusions. The following services shall be excluded from Medicaid reimbursement:

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual;
2. services provided at a work site which are job tasks oriented and not directly related to the treatment of the recipient's needs;
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving substance abuse services; and
4. services rendered in an institute for mental disease.

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 38:

### **Chapter 25. Provider Participation**

#### **§2501. Provider Responsibilities**

A. Each provider of behavioral health services shall enter into a contract with the statewide management organization in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department.

C. Providers of behavioral health services shall ensure that all services are authorized and any services that exceed

established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing behavioral health services must be certified by the department in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. Providers shall maintain case records that include, at a minimum:

1. a copy of the treatment plan;
2. the name of the individual;
3. the dates of service;
4. the nature, content and units of services provided;
5. the progress made toward functional improvement; and
6. the goals of the treatment plan.

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 38:

### **Chapter 27. Reimbursement**

#### **§2701. Reimbursement Methodology**

A. Reimbursement for services shall be based upon the established Medicaid fee schedule for behavioral health 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, Bureau of Health Services Financing, LR 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

#### **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. A public hearing on this proposed Rule is scheduled for Wednesday, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Children's Behavioral Health Services**

**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 state general fund programmatic costs of \$9,645,445 for FY 11-12, \$29,658,384 for FY 12-13 and \$30,844,719 for FY 13-14. It is anticipated that \$2,296 (\$1,148 SGF and \$1,148 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$21,812,484 for FY 11-12, \$68,483,190 for FY 12-13 and \$71,222,518 for FY 13-14. It is anticipated that \$1,148 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide behavioral health services to children with mental illness (approximately 641,280 service units annually). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$31,455,633 for FY 11-12, \$98,141,574 for FY 12-13 and \$102,067,237 for FY 13-14.

**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 and employment.

Don Gregory  
Medicaid Director  
1111#062

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Early and Periodic Screening, Diagnosis and Treatment  
Psychological and Behavioral Services and  
School Based Mental Health Services  
(LAC 50:XV.Chapter 77, 9101, 9113, 9121, and 9133)

Upon the implementation of the comprehensive system of delivery for behavioral health services, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal LAC 50:XV.Chapter 77 and to amend LAC 50:XV.9101, 9113, §9121, and §9133 in 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 reimbursement methodology governing psychological and behavioral services covered under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program in order to increase the reimbursement rates and to update the covered service descriptions in accordance with the revised Current Physicians' Terminology (CPT) and to remove the CPT procedure codes (*Louisiana Register*, Volume 33, Number 4).

The department adopted provisions to allow for Medicaid coverage and reimbursement of mental health services provided to students by school based health centers, to establish provisions for other Medicaid-covered services students already receive, and to clarify the scope of services rendered to students (*Louisiana Register*, Volume 34, Number 7).

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery mechanisms by developing and implementing a comprehensive system for behavioral health services that will be a coordinated system of care. The comprehensive system of behavioral health services is designed to provide an array of Medicaid State Plan and home and community-based waiver services to eligible children, youth and adults in need of behavioral health and substance abuse services. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

As a result of the promulgation of provisions governing the comprehensive system of behavioral health services in Part XXXIII of Title 50 of the *Louisiana Administrative Code*, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing the EPSDT Program in order to repeal Chapter 77 governing psychological and behavioral services as these provisions will be revised and repromulgated in Part XXXIII. In addition, the department proposes to amend the provisions governing school based health centers in order to remove any provisions relative to mental health services since these provisions will also be revised and repromulgated in Part XXXIII.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

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

**Chapter 77. Psychological and Behavioral Services**

**§7701. Recipient Criteria**

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 29:40 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:651 (April 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:



### §7703. Covered Services

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 29:40 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:651 (April 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §7705. Provider Qualifications

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 29:40 (January 2003), repromulgated LR 29:180 (February 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §7707. Reimbursement Methodology

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 29:40 (January 2003), repromulgated LR 29:180 (February 2003), amended LR 33:652 (April 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## Chapter 91. School Based Health Centers

### Subchapter A. General Provisions

#### §9101. Purpose

A. ...

B. School Based Health Centers (SBHCs) provide convenient access to preventive and primary health care services for students who might otherwise have limited or no access to health care, and meet the physical health needs of adolescents at their school sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 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 34:1419 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### Subchapter B. Provider Participation

#### §9113. Standards for Participation

A. - A.3. ...

B. The SBHC shall provide comprehensive primary medical and social services, as well as health education, promotion and prevention services to meet the physical health needs of students enrolled in the SBHC in the context of their family, culture and environment.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 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 34:1419 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### Subchapter C. Services

#### §9121. Scope of Services

A. The Medicaid Program provides reimbursement for medically necessary preventive health care services provided by school based health centers.

1. - 2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 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 34:1420 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### Subchapter D. Staffing Requirements

#### §9133. Staffing Qualifications for Mental Health Services

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 34:1420 (July 2008), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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 and autonomy as described in R.S. 49:972.

#### Public Comment

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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Early and Periodic Screening, Diagnosis and Treatment—Psychological and Behavioral Services and School Based Mental Health Services

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$656 (\$328 SGF and \$328 FED) will be expended in FY 11-12 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 revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$328 will be collected in FY 11-12 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 proposed rule amends the provisions governing the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program in order to repeal the provisions governing psychological and behavioral services as these provisions will be revised and repromulgated in Part XXXIII of Title 50 of the LAC as part of the implementation of the comprehensive system of delivery for behavioral health services. In addition, this proposed rule amends the provisions governing school based health centers in order to remove any provisions relative to mental health services since these provisions will also be revised and repromulgated in Part XXXIII. It is anticipated that implementation of this proposed rule will have no effect on persons or non-governmental groups in FY 11-12, FY 12-13 and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1111#063

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Home and Community-Based Behavioral  
Health Services Waiver  
(LAC 50:XXXIII. 8101, 8103, 8301,  
8303, 8305, 8501, and 8701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 81-87 in the Medical Assistance Program, and upon implementation of this comprehensive system of delivery for behavioral health services, the bureau hereby repeals LAC 50:XV.Chapters 1-13 governing mental health rehabilitation services and LAC 50:XI.Chapter 17 governing mental health clinics 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-

Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized services for a select group of high risk children and adolescents. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a home and community-based services (HCBS) waiver as part of the coordinated behavioral health services system under the Louisiana Medicaid Program. This HCBS waiver will provide behavioral health services to Medicaid eligible children diagnosed with mental illness or a serious emotional disturbance.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXXIII. Behavioral Health Services  
Subpart 9. Home and Community-Based Services  
Waiver**

**Chapter 81. General Provisions**

**§8101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to children with mental illness and severe emotional disturbances (SED) by establishing a home and community-based services (HCBS) waiver. This HCBS waiver shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health in collaboration with a statewide management organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The behavioral health services provided to children in the HCBS waiver are those services necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the community.

C. The HCBS waiver is designed as a nursing facility and hospitalization diversion program. The goal of this waiver is to divert nursing facility and psychiatric hospitalization placement through the provision of intensive home and community-based supportive services.

D. Local wraparound agencies will be the locus of treatment planning for the provision of all services. Wraparound agencies are the care management agencies for the day-to-day operations of the waiver in the parishes they serve. The wraparound agencies shall enter into a contract with the PIHP/SMO and are responsible for the treatment planning for the HCBS waiver in their areas, in accordance with 42 CFR 438.208(c).

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 38:

### **§8103. Recipient Qualifications**

A. The target population for the Home and Community-Based Behavioral Health Services Waiver Program shall be Medicaid recipients who:

1. are from 0 through the age of 21 years old;
2. have an Axis I mental health diagnosis;
3. are identified as seriously emotionally disturbed (SED);
4. require hospital or nursing facility level of care, as determined by the department's designated assessment tools and criteria; and
5. meet financial eligibility criteria.

B. The need for waiver services is re-evaluated at a minimum of every 180 days, and at any time the family feels that it is appropriate, as needs change, and/or as goals are completed. The re-evaluation determines if the recipient continues to be in need of psychiatric hospitalization or nursing facility level of care.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Chapter 83. Services**

### **§8301. General Provisions**

A. All behavioral health services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health practitioner (LMHP) or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services shall be prior authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody. Coordination with other child-serving systems should occur as needed to achieve the treatment goals. All coordination must be documented in the child's medical record.

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must request and approve the provision of services to the recipient.

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

1. age;
2. development;
3. education; and
4. culture.

E. Evidence-based practices require prior approval and fidelity reviews on an ongoing basis as determined necessary by the department.

F. Services may be provided at a site-based facility, in the community or in the individual's place of residence as outlined in the plan of care.

G. Services may be provided by a member of the participant's family, provided that the participant does not live in the family member's residence and the family member is not the legally responsible relative.

1. The following family members may provide the services:

- a. the parents of an adult recipient;
- b. siblings;
- c. grandparents;
- d. aunts;
- e. uncles; and
- f. cousins.

2. The family member must become an employee of the provider agency or contract with the PIHP/SMO and must meet the same standards as direct support staff that are not related to 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, Bureau of Health Services Financing, LR 38:

### **§8303. Service Plan Development**

A. Each individual that receives home and community-based behavioral health services shall have a plan of care (POC) developed within 30 days of intake.

B. If new to the PIHP/SMO provider system, the recipient will be receiving services based upon the POC while the wraparound process is being completed.

C. The POC is reviewed every 90 days with the recipient and parents or caregivers of the recipient. The wraparound facilitator works directly with the recipient, the family (or the recipient's authorized health care decision maker) and others to develop the POC. A crisis plan must be included in each recipient's POC.

D. The wraparound agency will facilitate development and implementation of a transition for each recipient beginning at the age of 15 years old, as he/she approaches adulthood.

E. Entities and/or individuals that have responsibility for service plan development may not provide other direct waiver services 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, Bureau of Health Services Financing, LR 38:

### **§8305. Covered Services**

A. The following behavioral health services shall be provided in the HCBS waiver program:

1. case management;
2. medical, psychiatric and psychosocial evaluations and assessments;
3. short-term respite care;
4. independent living/skills building;
5. youth support and training;
6. parent support and training; and
7. crisis stabilization.

#### **B. Service Limitations**

1. Short term respite care shall be pre-approved for the duration of 72 hours per episode with a maximum of 300 hours allowed per calendar year. Hours in excess of 300 may be authorized when deemed medically necessary.

2. Youth support and training services may not be provided by local education agencies and are limited to 750 hours per calendar year. Hours in excess of 750 may be authorized when deemed medically necessary.

3. Crisis stabilization services shall be pre-approved for the duration of seven days per episode for up to 30 days

per calendar year. This limit may be exceeded when deemed medically necessary.

C. Service Exclusions. The following services shall be excluded from Medicaid reimbursement:

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual;

2. services provided at a work site which are job tasks oriented and not directly related to the treatment of the recipient's needs;

3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving substance abuse services;

4. the cost of room and board associated with short-term respite care services; and

5. services rendered in an institution for mental disease.

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 38:

## **Chapter 85. Provider Participation**

### **§8501. Provider Responsibilities**

A. Each provider of home and community-based behavioral health waiver services shall enter into a contract with the statewide management organization in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department.

C. Providers of waiver services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing behavioral health services must be certified by the department in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. Providers shall maintain case records that include, at a minimum:

1. a copy of the treatment plan,;
  2. the name of the individual;
  3. the dates of service;
  4. the nature, content and units of services provided;
  5. the progress made toward functional improvement;
- and
6. the goals of the treatment plan.

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 38:

## **Chapter 87. Reimbursement**

### **§8701. Reimbursement Methodology**

A. Reimbursement for home and community-based behavioral health waiver services shall be based upon the established Medicaid fee schedule for the services rendered.

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 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

### **RULE TITLE: Home and Community-Based Behavioral Health Services Waiver**

#### **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 state general fund programmatic costs of \$771,450 for FY 11-12, \$2,410,908 for FY 12-13 and \$2,550,957 for FY 13-14. It is anticipated that \$2,870 (\$1,435 SGF and \$1,435 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,742,884 for FY 11-12, \$5,566,947 for FY 12-13 and \$5,890,329 for FY 13-14. It is anticipated that \$1,435 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a home and community-based behavioral health services waiver as part of the coordinated behavioral health services system under the Louisiana Medicaid Program. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$2,511,464 for FY 11-12, \$7,977,855 for FY 12-13 and \$8,441,286 for FY 13-14.

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 and employment.

Don Gregory  
Medicaid Director  
1111#043

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Pharmacy Benefits Management Program  
Prescription Time Limits (LAC 50:XXIX.117)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXIX.117 in 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 repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 32, Number 6)*. The department now proposes to amend the provisions of the June 2006 Rule to extend the expiration date for certain prescriptions.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXIX. Pharmacy**

**Chapter 1. General Provisions**

**§117. Time Limits**

A. Filling Prescriptions. Prescriptions for drugs other than a controlled substance shall expire one year after the date prescribed by a physician or other service practitioner covered under the Medicaid Program and shall be refilled not more than 11 times in one year. A prescription for a controlled dangerous substance listed in Schedule II, III, IV, or V shall expire six months after the date written and shall be refilled not more than five times in six months. Expired prescriptions shall not be refillable or renewable. Payment shall be made for prescriptions refilled for controlled substances in Schedule III, IV and V not more than five times or more than six months after issue date and only to the extent indicated by the prescriber on the original prescription, and is restricted by state and federal statutes.

B. Transferring Prescriptions. Transfer of a prescription from one pharmacy to another is allowed if less than one year has passed since the date prescribed and in accordance

with the Louisiana Board of Pharmacy requirements. Transfer of a prescription for a controlled substance in schedule III, IV & V from one pharmacy to another is allowed if less than six months has passed since the date prescribed, and transfer of a prescription for a controlled substance in Schedule II is not allowed. Transfers of prescriptions shall be allowed in accordance with the Louisiana Board of Pharmacy regulations.

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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1056 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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 has 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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Pharmacy Benefits Management  
Program—Prescription Time Limits**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 11-12 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 revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$123 will be collected in FY 11-12 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 proposed rule amends the provisions governing the Pharmacy Benefits Management Program to extend the expiration date for certain prescriptions. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 11-12, FY 12-13, and FY 13-14; however, there could be a potential for savings in the Professional Services Program to the extent that physician visits may be reduced.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1111#044

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Psychiatric Residential Treatment Facilities  
(LAC 50:XXXIII.Chapters 101-107)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 101-107 in 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized services for a select group of high risk children and adolescents. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to

implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide inpatient behavioral health services to children with emotional/behavioral disorders in psychiatric residential treatment facilities.

**Title 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE**

**Part XXXIII. Behavioral Health Services**

**Subpart 11. Psychiatric Residential Treatment Facility Services**

**Chapter 101. General Provisions**

**§10101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to children and youth in an inpatient psychiatric residential treatment facility (PRTF). These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health in collaboration with a Statewide Management Organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The behavioral health services rendered to children with emotional or behavioral disorders are those services necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§10103. Recipient Qualifications**

A. Individuals under the age of 21 with an identified mental health or substance abuse diagnosis, who meet Medicaid eligibility and clinical criteria, shall qualify to receive inpatient psychiatric residential treatment facility 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, Bureau of Health Services Financing, LR 38:

**Chapter 103. Services**

**§10301. General Provisions**

A. All behavioral health services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health practitioner (LMHP) or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services shall be prior authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody. Coordination with other child-serving systems should occur as needed to achieve the treatment goals. All coordination must be documented in the child's medical record.

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must request and approve the provision of services to the recipient.

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

1. age;
2. development;
3. education; and
4. culture.

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 38:

### **§10303. Covered Services**

A. The Medicaid Program may reimburse a psychiatric residential treatment facility for the following services:

1. physician (psychiatric) services;
2. pharmacy services;
3. diagnostic and radiology services;
4. laboratory services;
5. dental services;
6. vision services;
7. occupational therapy;
8. physical therapy;
9. speech-language therapy; and
10. transportation services.

B. Service Exclusions. The following services shall be excluded from Medicaid reimbursement:

1. services on the inpatient psychiatric active treatment plan that are not related to the provision of inpatient psychiatric care;
2. group education, including elementary and secondary education;
3. medical services provided outside of the PRTF; and
4. activities not on the inpatient psychiatric active treatment plan.

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 38:

### **Chapter 105. Provider Participation**

#### **§10501. Provider Responsibilities**

A. Each provider of PRTF services shall enter into a contract with the statewide management organization in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, licensing regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department.

C. Providers of PRTF services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing PRTF services must be certified by the department in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. PRTF facilities shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to the SMO in writing within the time limit established 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 38:

### **Chapter 107. Reimbursement**

#### **§10701. Reimbursement Methodology**

A. Covered inpatient, physician-directed PRTF services rendered to children and youth shall be reimbursed according to the following criteria.

1. Free-Standing PRTF Facilities. A free-standing PRTF facility shall be reimbursed using an interim Medicaid per diem rate for covered services. The per diem rate shall include reimbursement for the following services when provided by, and in, the facility when included on the active treatment plan:

- a. occupational therapy;
- b. physical therapy;
- c. speech therapy;
- d. laboratory services; and
- e. transportation services.

2. A free-standing PRTF shall arrange through contract(s) with outside (non-facility) providers to furnish dental, vision, and diagnostic/radiology treatment activities as listed on the treatment plan. If the activity is provided in the facility, the treating provider will be directly reimbursed. Reimbursement shall be based on the established Medicaid fee schedule for the covered service, excluded from the interim per diem rates for the facility.

3. Hospital-Based PRTF Facilities. A hospital-based PRTF facility shall be reimbursed a per diem rate for covered services. The per diem rate shall also include reimbursement for the following services when provided by, and in, the facility when included on the active treatment plan:

- a. dental services;
- b. vision services;
- c. diagnostic testing; and
- d. radiology services.

4. Pharmacy and physician services shall be reimbursed when provided by, and in, the PRTF and these services are included on the recipient's active treatment plan of care and are components of the Medicaid covered PRTF services. Payment shall be based on the established Medicaid pharmacy and physician fee schedule rates and made directly to the treating pharmacy or physician. These payments shall be excluded from the PRTF interim per diem rates for the facility.

B. All in-state Medicaid participating PRTF providers are required to file an annual Medicaid cost report according to the department's specifications and departmental guides and manuals. The cost report fiscal year must correspond to the state fiscal year.

C. Services provided outside of the facility and/or not on the active plan of care shall not be reimbursed.

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 38:

#### **§10703. In-State Publicly Owned and Operated**

##### **Psychiatric Residential Treatment Facilities**

A. In-state publicly owned and operated PRTFs shall be reimbursed for all reasonable and necessary costs of operation. These facilities shall receive the interim Medicaid

per diem payment for services provided in, and by, the facility on the active treatment plan.

B. The interim payment to in-state publicly owned and operated PRTFs will be subject to retroactive cost settlement in accordance with Medicare allowable cost principles contained in the Centers for Medicare and Medicaid Service's Provider Reimbursement Manual Publication 15-1.

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, Bureau of Health Services Financing, LR 38:

#### **§10705. In-State Privately Owned and Operated Psychiatric Residential Treatment Facilities**

A. In-state privately owned and operated PRTFs shall be reimbursed for covered PRTF services using a per diem rate consistent with the provisions of §10703 above. The fee schedule rate paid to the provider will be determined by the following ownership and service criteria:

1. free-standing private owned and operated PRTFs specializing in sexually-based treatment programs;
2. free-standing privately owned and operated PRTF specializing in substance abuse treatment programs;
3. hospital-based privately owned or operated PRTF specializing in sexually-based treatment programs; and
4. hospital-based privately owned or operated PRTF specializing in substance use treatment programs.

B. Except as otherwise noted in these provisions, the Medicaid fee schedule is the same for governmental and private individual practitioners.

C. Risk Sharing. In-state privately owned and operated PRTF covered services provided during the time period from January 1, 2012 through June 30, 2013 shall also receive risk-sharing payments. These payments shall be made as part of a transitional plan to include these services within the Medicaid Program.

D. Beginning July 1, 2013, no risk-sharing payments will be paid and all covered PRTF services rendered by private facilities will be reimbursed using the established Medicaid fee schedule rates.

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 38:

#### **§10707. Out-of-State Psychiatric Residential Treatment Facilities**

A. Out-of-state PRTFs shall be reimbursed in accordance with the Medicaid fee schedule rates by applicable provider type. Any publically owned and operated PRTFs outside of Louisiana will not receive cost settlements, nor will they receive risk-sharing 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 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

#### **RULE TITLE: Psychiatric Residential Treatment Facilities**

#### **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 state general fund programmatic costs of \$2,972,712 for FY 11-12, \$8,788,819 for FY 12-13 and \$8,788,819 for FY 13-14. It is anticipated that \$902 (\$451 SGF and \$451 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$6,722,453 for FY 11-12, \$20,293,970 for FY 12-13 and \$20,293,970 for FY 13-14. It is anticipated that \$451 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide inpatient behavioral health services to children with emotional/behavioral disorders in psychiatric residential treatment facilities. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by



approximately \$9,694,263 for FY 11-12, \$29,082,789 for FY 12-13 and \$29,082,789 for FY 13-14.

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 and employment.

Don Gregory  
Medicaid Director  
1111#045

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

Psychiatric Residential Treatment Facilities  
Minimum Licensing Standards  
(LAC 48:I.Chapter 90)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 90 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009. 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 adopted provisions which established minimum licensing standards for inpatient psychiatric residential treatment facilities (*Louisiana Register*, Volume 30, Number 1). The department now proposes to amend the provisions governing the minimum licensing standards for psychiatric residential treatment facilities in order to prepare for the transition to a comprehensive system of delivery for behavioral health services in the state.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing**

**Chapter 90. Psychiatric Residential Treatment Facilities (under 21)**

**Subchapter A. General Provisions**

**§9001. Purpose**

A. The purpose of this Chapter 90 is to provide for the development, establishment and enforcement of statewide standards for the care of residents in psychiatric residential treatment facilities (PRTFs) participating in the Medicaid Program, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of residents of PRTFs participating in the Medicaid Program.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:54 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§9003. Definitions**

A. The following defines selected terminology used in connection with this Chapter 90:

\* \* \*

*Accreditation*—official notification given the provider of compliance to standards established by either:

a. the Joint Commission (TJC), formerly known as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

b. the Commission on Accreditation of Rehabilitation Facilities (CARF); or

c. the Council on Accreditation for Children and Family Services (COA).

*Active Treatment*—implementation of a professionally developed and supervised individual plan of care that is developed no later than 14 days after admission and designed to achieve the recipient's discharge from inpatient status at the earliest possible time.

*Administrator*—the person responsible for the on-site, daily implementation and supervision of the facility's overall operation commensurate with the authority conferred by the governing body.

\* \* \*

*Chief Executive Officer (CEO) or Administrator*—  
Repealed.

\* \* \*

*DCFS*—the Department of Children and Family Services.

\* \* \*

*License*—the legal authority to operate as a PRTF in the state of Louisiana.

*Licensed Mental Health Professional (LMHP)*—an individual who meets one of the following education and experience requirements:

a. - b. ...

c. a medical psychologist licensed under the provisions of R.S. 28:2351-2370; or

d. a social worker who holds a master's degree in social work from an accredited school of social work and is a licensed clinical social worker under the provisions of R.S. 37:2701-2718, as amended; or

e. an advanced practice registered nurse licensed as a registered nurse in the state of Louisiana by the Board of Nursing who may practice to the extent that services are within the nurse's scope of practice; and

i. who is a nurse practitioner specialist in adult psychiatric and mental health and family psychiatric and mental health; or

ii. who is a certified nurse specialist in psychosocial, gerontological psychiatric mental health, adult psychiatric and mental health and child-adolescent mental health;

f. a licensed professional counselor who is licensed as such under the provision of R.S. 37:1101-1115 and has at least two years post master's supervised experience delivering services in the mental health-related field; or

g. a licensed marriage and family therapist who is licensed as such under the provisions of R.S. 37:1116-1121; or

h. a licensed addiction counselor who is licensed as such under the provisions of R.S. 37:3387.

\* \* \*

*LSUCCC*—the Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council.

\* \* \*

*Mental Health-Related Field*—academic training programs based on the principles, teachings, research and body of scientific knowledge of the *core mental health disciplines*. Programs which qualify include, but are not limited to sociology, criminal justice, nursing, marriage and family counseling, rehabilitation counseling, psychological counseling and other professional counseling. For any other program to qualify as a related field, there must be substantial evidence that the academic program has a curriculum content in which at least 70 percent of the required courses for graduation are based on the knowledge base of the *core mental health disciplines*.

\* \* \*

*Mental Health Specialist (MHS)*—a person who delivers direct care services under the direct supervision of a LMHP or MHP and who meets one or more of the following four criteria as documented by the provider:

- a. is actively pursuing a Bachelor of Arts degree in a *mental health-related field*; or
- b. is actively pursuing a Bachelor of Science degree in a *mental health-related field*; or
- c. has a Bachelor's degree and is a student pursuing a graduate degree in a *mental health-related field* and has completed at least two courses in that identified field; or
- d. has a high school degree or a GED and has two years experience providing direct services in a mental health, physical health, social services, educational or correctional setting.

\* \* \*

*Neglect*—the unreasonable refusal or failure of a facility to supply a resident with necessary food, clothing, shelter, care, treatment, or counseling for injury, illness, or condition of the resident, as a result of which the resident's physical, mental or emotional health and safety is substantially threatened or impaired.

\* \* \*

*OCS*—the Department of Child and Family Services, Office of Community Services.

*OPH*—the Department of Health and Hospitals, Office of Public Health.

*OSFM*—the Department of Public Safety and Corrections, Office of State Fire Marshal.

\*\*\*

*Psychiatric Residential Treatment Facility (PRTF)*—a facility other than a hospital, that provides inpatient psychiatric services, as described in 42 CFR part 441 subpart D, to individuals under age 21, in a residential setting.

*Restraint*—a personal *restraint*, mechanical *restraint*, or drug used as a *restraint*.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:54 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## Subchapter B. Licensing

### §9007. General Provisions

A. All psychiatric residential treatment facilities shall be licensed by the department. A PRTF shall not be established,

opened, operated, managed, maintained, or conducted in this state without a current valid license issued by the department. The department is the only licensing authority for PRTFs in the state of Louisiana. It shall be unlawful to operate a PRTF without possessing a current, valid license issued by the department. Each PRTF shall be separately licensed.

B. A PRTF license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the facility to which it is issued and only for the specific geographic address of that facility;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the PRTF facility;
5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

C. In order for the PRTF to be considered operational and retain licensed status, the facility shall meet the following conditions.

1. The PRTF shall always have at least two employees, one of whom is a licensed nurse, on duty at the facility location at all times.
2. There shall be staff employed and available to be assigned to provide care and services to each resident. Services rendered shall be consistent with the medical needs of each resident.

D. The licensed PRTF shall abide by and adhere to any state law, rules, policy, procedure, manual, or memoranda pertaining to such facilities.

E. A separately licensed PRTF shall not use a name which is substantially the same as the name of another such facility licensed by the department, unless such PRTF is under common ownership with other PRTFs.

F. No branches, satellite locations or offsite campuses shall be authorized for a PRTF.

G. No new PRTF, except one that has a Child Residential License by DCFS, shall accept residents until the PRTF has written approval and/or a license issued by HSS.

H. Plan Review. Construction documents (plans and specifications) are required to be submitted and approved by both the OSFM and the Department of Health and Hospitals as part of the licensing procedure and prior to obtaining a license.

#### 1. Submission Plans

##### a. Submittal Requirements

i. One set of the final construction documents shall be submitted to the OSFM for approval. The Fire Marshal's approval letter and final inspection shall be sent to the DHH.

ii. One set of the final construction documents shall be submitted to DHH along with the appropriate review fee and a "plan review application form" for approval.

b. Applicable Projects. Construction documents require approval for new construction and major alterations.

c. Design Criteria. The project shall be designed in accordance with the following criteria:

i. the latest OSFM adopted edition of the National Fire Protection Agency (NFPA) 101-Life Safety Code;

ii. the latest LSUCCC adopted edition of the *International Building Code*;

iii. the current licensing standards for psychiatric residential treatment facilities; and

iv. the latest OPH adopted edition of the *Louisiana State Plumbing Code*.

d. Construction Document Preparation. Construction documents submitted to DHH shall be prepared only by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed. These documents shall be of an architectural or engineering nature and thoroughly illustrate the project that is accurately drawn, dimensioned, and contain noted plans, details, schedules and specifications. At a minimum the following shall be submitted:

i. site plans;

ii. floor plans. These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;

iii. building elevations;

iv. room finish, door and window schedules;

v. details pertaining to the Americans with Disabilities Act (ADA) requirements; and

vi. specifications for materials.

2. Waivers. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of, or otherwise required under, the provisions of the state Sanitary Code. The facility must submit a waiver request in writing to HSS. The facility must demonstrate how patient safety and quality of care offered is not compromised by the waiver, and must demonstrate the undue hardship imposed on the facility if the waiver is not granted. The facility must demonstrate their ability to completely fulfill all other requirements of service. The department will make a written determination of the requests.

a. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related the waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §9009. Initial Licensing Application Process

A. An initial application for licensing as a PRTF shall be obtained from the department. A completed initial license application packet for a PRTF shall be submitted to and approved by the department prior to an applicant providing PRTF services.

B. Currently licensed DCFS child residential facilities that are converting to PRTFs must comply with all of the initial licensure requirements, except plan review, and may be eligible for the exception to the bedroom space requirement of this Chapter.

C. An applicant must submit a completed initial licensing application packet to the department, which shall include:

1. a completed PRTF licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural facility plans for the PRTF from the department and from the OSFM, and any other office/entity designated by the department to review and approve the facility's architectural plans, if the facility must go through plan review;

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health (OPH);

5. a copy of statewide criminal background checks on all individual owners with a 5 percent or more ownership interest in the PRTF entity, and on all members of the PRTF's board of directors, if applicable, and administrators;

6. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

7. if applicable, Clinical Laboratory Improvement Amendments (CLIA) certificate or CLIA certificate of waiver;

8. a floor sketch or drawing of the premises to be licensed; and

9. any other documentation or information required by the department for licensure.

D. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of the notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a PRTF must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

E. Once the initial licensing application packet has been approved by the department, notification of the approval shall be forwarded to the applicant. Within 90 days of receipt of the approval notification, the applicant must notify the department that the PRTF is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application has been closed, an applicant who is still interested in becoming a PRTF must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

F. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the PRTF will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §9011. Types of Licenses

A. The department shall have the authority to issue the following types of licenses.

1. Full Initial License. The department shall issue a full license to the facility when the initial licensing survey

finds that the PRTF is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees. The license for a PRTF shall be valid until the expiration date shown on the license, unless the license is revoked, suspended, modified, or terminated prior to that time. The initial license shall specify the capacity of the facility.

2. **Provisional Initial License.** The department may issue a provisional initial license to the facility when the initial licensing survey finds that the PRTF is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, Rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the residents or participants. The provisional license shall be valid for a period not to exceed six months.

a. At the discretion of the department, the provisional initial license may be extended for an additional period not to exceed 90 days in order for the PRTF to correct the noncompliance or deficiencies.

b. The facility must submit a plan of correction to the department for approval and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional initial license.

c. A follow-up survey shall be conducted prior to the expiration of the provisional initial license.

i. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, a full license will be issued.

ii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional initial license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

3. **Full Renewal License.** The department may issue a full renewal license to an existing licensed PRTF who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, Rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. **Provisional Renewal License.** The department, in its sole discretion, may issue a provisional license to an existing licensed PRTF for a period not to exceed six months.

a. At the discretion of the department, the provisional renewal license may be extended for an additional period not to exceed 90 days in order for the PRTF to correct the noncompliance or deficiencies.

b. A provisional renewal license may be issued for the following reasons:

i. the existing PRTF has more than five deficient practices or deficiencies cited during any one survey;

ii. the existing licensed PRTF has more than three validated complaints in a one year period;

iii. the existing PRTF has been issued a deficiency that involved placing a resident or participant at risk for serious harm or death;

iv. the existing PRTF has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey; or

v. the existing PRTF is not in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, Rules regulations and fees at the time of renewal of the license.

c. When the department issues a provisional renewal license to an existing licensed PRTF, the provider shall submit a plan of correction to the department for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct an on-site follow-up survey at the PRTF prior to the expiration of the provisional license.

i. If the on-site follow-up survey determines that the PRTF has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the PRTF license.

ii. If the on-site follow-up survey determines that the PRTF has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional renewal license shall expire and the facility shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee, if no timely informal reconsideration or administrative appeal is filed pursuant to this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9013. Deemed Status**

A. A licensed PRTF may request deemed status from the department. The department may accept accreditation in lieu of a routine on-site licensing survey provided that:

1. the accreditation is obtained through an organization approved by the department;

2. all services provided under the PRTF license must be accredited; and

a. - b. Repealed.

3. the provider forwards the accrediting body's findings to the Health Standards Section within 30 days of its accreditation.

4. - 5. Repealed.

B. If approved, accreditation will be accepted as evidence of satisfactory compliance with all of the provisions of these requirements.

1. - 2. Repealed.

C. Occurrence of any of the following may be grounds for the department to perform a survey on an accredited PRTF provider with deemed status:

1. any valid complaint in the preceding 12-month period;

2. addition of services;

3. a change of ownership in the preceding 12-month period;

4. issuance of a provisional license in the preceding 12-month period;

5. serious violations of licensing standards or professional standards of practice that were identified in the preceding 12-month period that placed residents at risk for harm;

6. a report of inappropriate treatment or service resulting in death or serious injury; or

7. a change in geographic location.

D. A PRTF with deemed status is responsible for complying with all of the provisions of this Rule and is subject to all of the provisions of this Rule.

E. - N.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:56 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9015. Licensing Surveys**

A. Prior to the initial license being issued to the PRTF, an initial licensing survey shall be conducted on-site at the facility to assure compliance with licensing standards. Except for facilities that have a Child Residential License issued by DCFS, every PRTF shall not provide services to any resident until the initial licensing survey has been performed and the facility found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

1. - 3. Repealed.

B. Once an initial license has been issued, the department may conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, Rules, regulations, and fees. These surveys shall be unannounced.

C. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices. The department shall issue written notice to the provider of the results of the follow-up survey.

D. An acceptable plan of correction may be required for any survey where deficiencies have been cited.

E. If deficiencies have been cited during a licensing survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. civil fines;
2. directed plans of correction; and
3. license revocations.

F. Surveyors and staff on behalf of the department shall be:

1. given access to all areas of the facility and all relevant files during any licensing survey or other survey; and

2. allowed to interview any provider staff, resident, or participant as necessary to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:56 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9017. Changes in Licensee Information or Personnel**

A. A PRTF license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any change regarding the PRTF's name, "doing business as" name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the change. Any change regarding the PRTF name or "doing business as" name requires a change to the facility license and shall require a \$25 fee for the issuance of an amended license.

1. - 15. Repealed.

C. Any change regarding the facility's key administrative personnel shall be reported in writing to the department within five days of the change.

1. Key administrative personnel shall include the:

- a. administrator;
- b. clinical director; and
- c. program manager.

2. The facility's notice to the department shall include the individual's:

- a. name;
- b. hire date; and
- c. qualifications.

D. A change of ownership (CHOW) of the PRTF shall be reported in writing to the department at least five days prior to the change of ownership.

1. The license of a PRTF is not transferable or assignable. The license cannot be sold.

2. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all of the application requirements are completed and approved by the department, a new license shall be issued to the new owner.

3. A PRTF that is under license revocation or denial of license renewal may not undergo a CHOW.

E. Any request for a duplicate license must be accompanied by a \$25 fee.

1. Repealed.

F. A PRTF that intends to change the physical address of its geographic location is required to have plan review approval, Office of State Fire Marshal approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation of the facility.

1. Written notice of intent to relocate must be submitted to HSS when the plan review request is submitted to the department for approval.

2. Relocation of the facility's physical address results in a new anniversary date and the full licensing fee must be paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:56 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9019. Cessation of Business**

A. A facility that intends to close or cease operations shall comply with the following procedures:

1. give 30 days advance written notice to:
  - a. HSS;
  - b. the prescribing physician; and

c. the parent(s) or legal guardian or legal representative of each resident;

2. notify the department of the location where the records will be stored and the contact person for the records; and

3. provide for an orderly discharge and transition of all of the residents in the facility.

B. If a PRTF fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a PRTF for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9021. Renewal of License**

A. To renew a license, a PRTF must submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. a copy of the current on-site inspection report with approval for occupancy from the Office of the State Fire Marshal and the Office of Public Health;
3. proof of financial viability, comprised of the following:
  - a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$100,000;
  - b. general and professional liability insurance of at least \$300,000; and
  - c. worker's compensation insurance;
4. the license renewal fee; and
5. any other documentation required by the department.

B. The department may perform an on-site survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the PRTF license.

D. The renewal of a license does not in any manner affect any sanction, civil fine, or other action imposed by the department against the facility.

E. If an existing licensed PRTF has been issued a notice of license revocation, suspension, or termination, and the facility's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9023. Denial of License, Revocation of License, Denial of License Renewal**

A. In accordance with the provisions of the Administrative Procedure Act, the department may:

1. deny an application for an initial license;
2. deny a license renewal; or
3. revoke a license.

### **B. Denial of an Initial License**

1. The department shall deny an initial license when the initial licensing survey finds that the PRTF is noncompliant with any licensing laws or regulations or with any other required statutes, laws, ordinances, Rules or regulations and such noncompliance presents a potential threat to the health, safety, or welfare of the residents who will be served by the facility.

2. The department shall deny an initial license for any of the reasons in this Chapter that a license may be revoked or non-renewed.

### **C. Voluntary Non-Renewal of a License**

1. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

2. If a provider fails to timely renew its license, the facility shall immediately cease providing services, unless the provider is actively treating residents, in which case the provider shall:

- a. immediately provide written notice to the department of the number of residents that are receiving treatment at the PRTF;
- b. immediately provide written notice to the prescribing physician and to every resident, parent, legal guardian, or legal representative of the following:
  - i. voluntary non-renewal of the facility's license;
  - ii. date of closure of the facility; and
  - iii. plans for orderly transition of the resident;
- c. discharge and transition of each resident within 15 days of voluntary non-renewal; and
- d. notify the department of the location where records will be stored and the contact person for the records.

3. If a PRTF fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a PRTF for a period of two years.

D. Revocation of License or Denial of License Renewal. A PRTF license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the PRTF licensing laws, rules and regulations, or with other required statutes, laws, ordinances, rules, or regulations;
2. failure to comply with the terms and provisions of a settlement agreement or education letter with or from the department, the Attorney General's Office, any regulatory agency, or any law enforcement agency;
3. failure to uphold a resident's rights whereby deficient practices result in harm, injury, or death of a resident;
4. negligence or failure to protect a resident from a harmful act of an employee or other resident including, but not limited to:
  - a. mental or physical abuse, neglect, exploitation, or extortion;
  - b. any action posing a threat to a resident's health and safety;
  - c. coercion;

- d. threat or intimidation;
  - e. harassment; or
  - f. criminal activity;
5. failure to notify the proper authorities, as required by federal or state law, rules, or regulations, of all suspected cases of the acts outlined in §9023.D.4;
  6. knowingly making a false statement in any of the following documentation, including but not limited to:
    - a. application for initial license or renewal of license;
    - b. data forms;
    - c. records, including:
      - i. clinical;
      - ii. resident; or
      - iii. facility;
    - d. matters under investigation by the department or the Office of Attorney General; or
    - e. information submitted for reimbursement from any payment source;
  7. knowingly making a false statement or providing false, forged, or altered information or documentation to department employees or to law enforcement agencies;
  8. the use of false, fraudulent or misleading advertising;
  9. fraudulent operation of a PRTF by the owner, administrator, manager, member, officer, or director;
  10. an owner, officer, member, manager, administrator, director, or person designated to manage or supervise resident care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court:
    - a. For purposes of these provisions, conviction of a felony means a felony relating to any of the following:
      - i. violence, abuse, or neglect of another person;
      - ii. misappropriation of property belonging to another person;
      - iii. cruelty, exploitation, or sexual battery of a juvenile or the infirmed;
      - iv. a drug offense;
      - v. crimes of a sexual nature;
      - vi. possession or use of a firearm or deadly weapon; or
      - vii. fraud or misappropriation of federal or state funds, including Medicare or Medicaid funds;
  11. failure to comply with all of the reporting requirements in a timely manner as required by the department;
  12. failure to allow or refusal to allow the department to conduct an investigation or survey, or to interview provider staff or the residents;
  13. failure to allow or refusal to allow access to facility or resident records by authorized departmental personnel;
  14. bribery, harassment, or intimidation of any resident or family member designed to cause that resident or family member to use or retain the services of any particular PRTF;
  15. cessation of business or non-operational status; or
  16. failure to maintain accreditation or failure to obtain accreditation.

E. If a PRTF license is revoked or renewal is denied, (other than for cessation of business or non-operational status) or the license is surrendered in lieu of an adverse action, any owner, officer, member, director, manager, or

administrator of such PRTF may be prohibited from opening, managing, directing, operating, or owning another PRTF for a period of two years from the date of the final disposition of the revocation, denial action, or surrender.

F. The denial of the license renewal application shall not affect in any manner the license revocation, suspension, or termination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§9025. Notice and Appeal of License Denial, License Revocation, License Non-Renewal, and Appeal of Provisional License**

A. Notice of a license denial, license revocation or license non-renewal shall be given to the provider in writing.

B. The PRTF has a right to an informal reconsideration of the license denial, license revocation, or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The PRTF shall request the informal reconsideration within 10 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration must be in writing and shall be forwarded to the Health Standards Section.

2. The request for informal reconsideration must include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the facility shall receive written notification of the date of the informal reconsideration.

4. The facility shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the denial, revocation or non-renewal shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The facility shall be notified in writing of the results of the informal reconsideration.

C. The PRTF has a right to an administrative appeal of the license denial, license revocation, or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the provider.

1. The PRTF shall request the administrative appeal within 30 calendar days of the receipt of the notice of the informal reconsideration of the license denial, license revocation, or license non-renewal.

- a. The facility may forego its rights to an informal reconsideration, and if so, the facility shall request the administrative appeal within 30 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal.

2. The request for administrative appeal must be in writing and shall be submitted to the DAL or its successor. The request shall include any documentation that

demonstrates that the determination was made in error and must include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the DAL or its successor, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the facility shall be allowed to continue to operate and provide services until such time as the DAL issues a final administrative decision.

a. If the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a resident, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The facility shall be notified of this determination in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal shall not be a basis for the administrative appeal.

D. If an existing licensed PRTF has been issued a notice of license revocation and the facility's license is due for annual renewal, the department shall deny the license renewal. The denial of the license renewal does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the facility on a license denial, license non-renewal, or license revocation, the Division of Administrative Law shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the division if good cause is shown.

1. If the final DAL decision is to reverse the license denial, the license non-renewal, or the license revocation, the facility's license will be re-instated or granted upon the payment of any licensing fees or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final DAL decision is to affirm the license non-renewal or the license revocation, the facility shall discharge any and all residents receiving services according to the provisions of this Chapter. Within 10 days of the final agency decision, the facility shall notify the department's licensing section in writing of the secure and confidential location of where the residents' records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new PRTF or a provisional license to an existing PRTF. The issuance of a provisional license is not considered to be a denial of license, a denial of license renewal, or a license revocation.

G. A facility with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey, shall have the right to an informal reconsideration and the right to an administrative appeal regarding the deficiencies cited at the follow-up survey.

1. The correction of a violation, noncompliance, or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

2. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

3. The facility shall submit a written request for informal reconsideration within five calendar days of receipt of the department's notice of the results of the follow-up survey.

a. The facility may forego its right to an informal reconsideration.

4. The facility shall submit a written request to the Division of Administrative Law for an administrative appeal within 15 calendar days of receipt of the department's notice of the results of the informal reconsideration.

a. If the facility has opted to forego the informal reconsideration process, a written request for an administrative appeal shall be made within 15 calendar days of receipt of the department's notice of the results of the follow-up survey.

H. A facility with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge the residents unless the Division of Administrative Law issues a stay of the expiration.

1. A stay may be granted upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing and upon a showing that there is no potential harm to the residents being served by the facility.

I. If a timely administrative appeal has been filed by a facility with a provisional initial license that has expired or by an existing provider whose provisional license has expired under the provisions of this Chapter, the Division of Administrative Law shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law if good cause is shown.

1. If the final DAL decision is to remove all deficiencies, the facility's license will be reinstated upon the payment of any licensing fees or other fees due to the department, and the payment of any outstanding sanctions due to the department.

2. If the final DAL decision is to uphold the deficiencies and affirm the expiration of the provisional license, the facility shall discharge all residents receiving services. Within 10 calendar days of the final agency decision, the facility shall provide written notification to HSS of the secure and confidential location of where the resident's records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9027. Complaint Surveys**

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13, et seq. on any PRTF, including those with deemed status.

1. - 7. Repealed.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction may be required by the department for any complaint survey where deficiencies have been cited. If the department determines other action, such as license revocation is appropriate, a plan of correction may not be required and the facility will be notified of such action.



D. A follow-up survey may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices. If the department determines that other action, such as license revocation, is appropriate, a follow-up survey may not be required. The facility will be notified of any action.

E. The department may issue appropriate sanctions, including but not limited to, civil fines, directed plans of correction, and license revocations, for deficiencies and non-compliance with any complaint survey.

F. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff, resident, or participant, as necessary or required to conduct the survey.

G. A PRTF which has been cited with violations or deficiencies on a complaint survey has the right to request an informal reconsideration of the validity of the violations or deficiencies. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 10 calendar days of the facility's receipt of the notice of the violations or deficiencies.

H. A complainant shall have the right to request an informal reconsideration of the findings of the complaint survey or investigation that resulted from his/her complaint. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 30 calendar days of the complainant's receipt of the results of the complaint survey or investigation.

I. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as an administrative review. The facility or complainant shall submit all documentation or information for review for the informal reconsideration and the department shall consider all documentation or information submitted. There is no right to appear in person at the informal reconsideration of a complaint survey or investigation. Correction of the violation or deficiency shall not be the basis for the reconsideration. The provider and the complainant shall be notified in writing of the results of the informal reconsideration.

J. Except for the right to an administrative appeal provided in R.S. 40:2009.16(A), the informal reconsideration shall constitute final action by the department regarding the complaint survey or investigation, and there shall be no right to an administrative appeal.

1. To request an administrative appeal pursuant to R.S. 40:2009.16, the written request for the appeal shall be submitted to the Division of Administrative Law (DAL) and must be received within 30 calendar days of the receipt of the results of the informal reconsideration.

2. The administrative law judge shall not have the authority to overturn or delete deficiencies or violations and shall not have the authority to add deficiencies or violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:59 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **§9029. Statement of Deficiencies**

A. The following statements of deficiencies issued by the Department to the PRTF shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and

2. any complaint survey statement of deficiencies issued after the most recent annual survey.

B. Any statement of deficiencies issued by the department to a PRTF shall be available for disclosure to the public 30 calendar days after the provider submits an acceptable plan of correction of the deficiencies or 90 calendar days after the statement of deficiencies is issued to the provider, whichever occurs first.

1. - 6. Repealed.

C. Unless otherwise provided in statute or in this Chapter, a facility shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the deficient practice, of the violation, or of the noncompliance shall not be the basis for the reconsideration.

2. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section and will be considered timely if received by HSS within 10 days of the provider's receipt of the statement of deficiencies.

3. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.11 et seq., and as provided in this Chapter for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

5. The provider shall be notified in writing of the results of the informal reconsideration.

D. - E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:59 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Subchapter C. Organization and Administration**

### **§9031. General Provisions**

A. Purpose and Organizational Structure. The purpose of the PRTF shall be clearly defined in a statement filed with the Department. The statement includes the:

1. program philosophy;

2. program goals and objectives;

3. ages, sex and characteristics of residents accepted for care;

4. geographical area served;

5. types of services provided;

6. description of admission policies; and

7. needs, problems, situations or patterns best addressed by the provider's program.

B. House Rules. The provider shall have a clearly written list of rules governing conduct for residents in care

and shall document that these rules are made available to each staff member, resident, and where appropriate, the resident's parent(s) or legal guardian(s).

C. - M.3.d. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:60 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9033. Governing Body**

A. The PRTF must have either an effective governing body or individual(s) legally responsible for the conduct of the PRTF operations. No contracts/arrangements or other agreements may limit or diminish the responsibility of the governing body.

1. - 2. Repealed.

B. The governing body shall:

1. establish PRTF-wide policy;
2. adopt bylaws;
3. appoint an administrator;
4. designate qualified clinical director to assume responsibility for the psychiatric aspects of the program and to provide full-time coverage on an on-site or on-call basis;
5. maintain quality of care;
6. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;
7. meet with designated representatives of the department whenever required to do so;
8. inform the department or its designee prior to initiating any substantial changes in the services provided by the facility; and
9. provide an overall institutional plan and budget, and ensure the facility is adequately funded and fiscally sound.

C. The governing body and/or their designee(s) shall develop and approve policies and procedures which define and describe the scope of services offered. They shall be revised as necessary and reviewed at least annually.

D. There shall be an organizational chart that delineates lines of authority and responsibility for all PRTF personnel.

E. The PRTF shall, when required by law, have a representative present at all judicial, educational, or administrative hearings that address the status of a resident in the care of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:63 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9035. Administrative Policies and Records**

A. Every PRTF shall have policies that are clearly written and current. All policies shall be available for review by all staff and DHH personnel. All policies shall be available for review upon request by a resident or a resident's parent or legal guardian.

B. All policies shall be reviewed annually by the governing body.

C. The PRTF shall have policies governing:

1. admission and discharge;
2. personnel;
3. volunteers;
4. grievance procedures;
5. behavior management;
6. use of restraint and seclusion;
7. mandatory reporting of abuse;
8. administering medication;
9. confidentiality of records;
10. participation of residents in activities related to fundraising and publicity;
11. participation of residents in research projects;
12. the photographing and audio or audio-visual recording of residents; and
13. emergency procedures;
14. sentinel events and critical incidents; and
15. factors that determine room assignments, including, but not limited to, age and diagnoses.

D. Admission Policy

1. A PRTF shall have written admission policies and criteria which shall include the following:

- a. intake policy and procedures;
- b. admission criteria and procedures;
- c. policy regarding the determination of legal status, according to appropriate state laws, before admission;
- d. the age of the populations served;
- e. the services provided by the PRTF;
- f. criteria for discharge;
- g. only accepting residents for placement from the parent(s), legal guardian(s) custodial agency or a court of competent jurisdiction;
- h. not admitting more residents into care than the number specified on the provider's license; and
- i. ensuring that the resident, the resident's parent(s) or legal guardian(s) and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. Proper consents shall be obtained before admission.

2. Notification of Facility Policy Regarding the Use of Restraint and Seclusion. At admission, the facility must:

- a. inform both the incoming resident and, in the case of a minor, the resident's parent(s) or legal guardian(s) of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;
- b. communicate its restraint and seclusion policy in a language that the resident, or his or her parent(s) or legal guardian(s) understands (including American Sign Language, if appropriate) and when necessary, the facility must provide interpreters or translators;
- c. obtain an acknowledgment, in writing, from the resident, or in the case of a minor, from the parent(s) or legal guardian(s) that he or she has been informed of the facility's policy on the use of restraint or seclusion during an emergency safety situation. Staff must file this acknowledgment in the resident's record; and
- d. provide a copy of the facility policy to the resident and in the case of a minor, to the resident's parent(s) or legal guardian(s).

i. The facility's policy must provide contact information, including the phone number and mailing address, for the appropriate state protection and advocacy organization.

#### E. Behavior Management

1. The PRTF shall develop and maintain a written behavior management policy which includes:

- a. the goals and purposes of the behavior management program;
- b. the methods of behavior management;
- c. a list of staff authorized to administer the behavior management policy;
- d. the methods of monitoring and documenting the use of the behavior management policy; and
- e. minimizing the use of restraint and seclusion and using less restrictive alternatives whenever possible.

2. The facility policy shall prohibit:

- a. shaking, striking, spanking or other cruel treatment;
- b. harsh, humiliating, cruel, abusive or degrading language;
- c. denial of food or sleep;
- d. work tasks that are degrading or unnecessary and inappropriate to the resident's age and ability;
- e. denial of private familial and significant other contact, including visits, phone calls, and mail, as a means of punishment;
- f. use of chemical agents, including tear gas, mace, or similar agents;
- g. extreme physical exercise;
- h. one resident punishing another resident;
- i. group punishment;
- j. violating a resident's rights; and
- k. use of restraints or seclusion in non-emergency situations.

3. The PRTF must satisfy all of the requirements contained in federal and state laws and regulations regarding the use of restraint or seclusion, including application of time out.

#### F. Resident Abuse

1. The provider shall have comprehensive written procedures concerning resident abuse including:

- a. a description of ongoing communication strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, and mandated reporting requirements to HSS and the DCFS, Child Welfare Division;
- b. a procedure for disciplining staff members who abuse or neglect a resident;
- c. procedures for insuring that the staff member involved in suspected resident abuse or neglect does not work directly with the resident involved or any other resident in the program until the investigation is complete.

2. Any case of suspected resident abuse or neglect shall be reported immediately to the HSS and, unless prohibited by state law, the DCFS, Child Welfare Division.

3. Staff must report any case of suspected resident abuse or neglect to both HSS and the DCFS, Child Welfare Division by no later than close of business the next business day after a case of suspected resident abuse or neglect. The report must include:

- a. the name of the resident involved in the suspected resident abuse or neglect;
- b. a description of the suspected resident abuse or neglect;
- c. the date and time the suspected abuse or neglect occurred;
- d. the steps taken to investigate the abuse and/or neglect; and
- e. the action taken as a result of the incident.

4. In the case of a minor, the facility must notify the resident's parent(s) or legal guardian(s) as soon as possible, and in no case later than 24 hours after the suspected resident abuse or neglect.

5. Staff must document in the resident's record that the suspected resident abuse or neglect was reported to both HSS and the DCFS, Child Welfare Division, including the name of the person to whom the incident was reported. A copy of the report must be maintained in the resident's record.

G. The facility must report each serious occurrence to both HSS and, unless prohibited by state law, the DCFS, Child Welfare Division. Serious occurrences that must be reported include a resident's death, or a serious injury to a resident or a suicide attempt by a resident.

1. Staff must report any serious occurrence involving a resident to both HSS and the DCFS, Child Welfare Division by no later than close of business the next business day after a serious occurrence. The report must include the name of the resident involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the facility. The facility must conduct an investigation of the serious occurrence to include interviews of all staff involved, findings of the investigation, and actions taken as a result of the investigation.

2. In the case of a minor, the facility must notify the resident's parent(s) or legal guardian(s) as soon as possible, and in no case later than 24 hours after the serious occurrence.

3. Staff must document in the resident's record that the serious occurrence was reported to both HSS and the DCFS, Child Welfare Division, including the name of the person to whom the incident was reported. A copy of the report must be maintained in the resident's record, as well as in the incident and accident report logs kept by the facility.

H. The PRTF shall have a written policy regarding participation of residents in activities related to fundraising and publicity. Consent of the resident and, where appropriate, the resident's parent(s) or legal guardian(s) shall be obtained prior to participation in such activities.

I. The PRTF shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of residents.

1. The written consent of the resident and, where appropriate, the resident's parent(s) or legal guardian(s) shall be obtained before the resident is photographed or recorded for research or program publicity purposes.

2. All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the resident.

J. The PRTF shall have written policies regarding the participation of residents in research projects. No resident

shall participate in any research project without the express written consent of the resident and the resident's parent(s) or legal guardian(s).

#### K. Administrative Records

1. The records and reports to be maintained at the facility and available for survey staff to review are:

- a. residents' clinical records;
- b. personnel records;
- c. criminal history investigation records;
- d. orientation and training hour records;
- e. menus of food served to residents;
- f. fire drill reports acceptable to the OFSM as defined by the most current adopted edition of the *NFPA 101, Life Safety Code*;
- g. schedules of planned recreational, leisure or physical exercise activities;
- h. all leases, contracts and purchase-of-service agreements to which the provider is a party;
- i. all written agreements with appropriately qualified professionals, or state agencies, for required professional services or resources not available from employees of the provider;
- j. written policies and procedures governing all aspects of the provider's activities to include:
  - i. behavior management;
  - ii. emergency evacuation; and
  - iii. smoking policy.

L. Information obtained by the department from any applicant or licensee regarding residents, their parents, or other relatives is deemed confidential and privileged communication. The names of any complainants and information regarding a resident abuse report or investigation is kept confidential.

1. The PRTF shall ensure the confidentiality and security of resident records, including information in a computerized medical record system, in accordance with the HIPAA Privacy Regulations and any Louisiana state laws and regulations which provide a more stringent standard of confidentiality than the HIPAA Privacy Regulations. Information from, or copies of records may be released only to authorized individuals, and the PRTF must ensure that unauthorized individuals cannot gain access to or alter resident records. Original medical records shall not be released outside the PRTF unless under court order or subpoena or in order to safeguard the record in the event of a physical plant emergency or natural disaster.

a. The provider shall have written procedures for the maintenance and security of clinical records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the provider, and the provider as custodian shall secure records against loss, tampering or unauthorized use.

b. Employees of the PRTF shall not disclose or knowingly permit the disclosure of any information concerning the resident or his/her family, directly or indirectly, to any unauthorized person.

c. When the resident is of majority age and noninterdicted, the provider shall obtain the resident's written, informed permission prior to releasing any information from which the resident or his/her family might

be identified, except for accreditation teams and authorized state and federal agencies.

d. When the resident is a minor or is interdicted, the provider shall obtain written, informed consent from the parent(s) or legal guardian(s) prior to releasing any information from which the resident or his/her family might be identified, except for accreditation teams, authorized state and federal agencies.

e. The provider shall, upon written authorization from the resident or his/her parent(s) or legal guardian(s), make available information in the case record to the resident, his counsel or the resident's parent(s) or legal guardian(s).

f. If, in the professional judgment of the clinical director, it is felt that information contained in the record is reasonably likely to endanger the life or physical safety of the resident, the provider may deny access to the record. In any such case the provider shall prepare written reasons for denial to the person requesting the record and shall maintain detailed written reasons supporting the denial in the resident's file.

g. The provider may use material from case records for teaching for research purposes, development of the governing body's understanding and knowledge of the facility's services, or similar educational purposes, provided names are deleted, other identifying information is disguised or deleted, and written authorization is obtained from the resident or his/her parent(s) or legal guardian(s).

2. PRTF records shall be retained by the PRTF in their original, microfilmed or similarly reproduced form for a minimum period of 10 years from the date a resident is discharged.

a. Graphic matter, images, x-ray films, nuclear medicine reports and like matter that were necessary to produce a diagnostic or therapeutic report shall be retained, preserved and properly stored by the PRTF in their original, microfilmed or similarly reproduced form for a minimum period of five years from the date a resident is discharged. Such graphic matter, images, x-ray film and like matter shall be retained for longer periods when requested in writing by any one of the following:

- i. an attending or consulting physician of the resident;
- ii. the resident or someone acting legally in his/her behalf; or
- iii. legal counsel for a party having an interest affected by the resident's medical records.

3. The written record for each resident shall include:

a. administrative, treatment, and educational data from the time of admission until the time the resident leaves the facility, including intake evaluation notes and physician progress notes;

b. the name, home address, home telephone number, name of parent(s) or legal guardian(s), home address, and telephone number of parent(s) or legal guardian(s) (if different from resident's), sex, race, religion, birth date and birthplace of the resident;

c. other identification data including documentation of court status, legal status or legal custody and who is authorized to give consents;

d. placement agreement;

e. the resident's history including educational background, employment record, prior medical history and prior placement history;

f. a copy of the resident's individual service plan and any modifications to that plan;

g. progress reports;

h. reports of any incidents of abuse, neglect, accidents or critical incidents, including use of passive physical restraints;

i. reports of any resident's grievances and the conclusions or dispositions of these reports. If the resident's grievance was in writing, a copy of the written grievance shall be included;

j. a summary of family visits and contacts including dates, the nature of such visits/contacts and feedback from the family;

k. a summary of attendance and leaves from the facility;

l. the written notes from providers of professional or specialized services; and

m. the discharge summary at the time of discharge.

4. All of the resident's records shall be available for inspection by the department.

#### M. Quality Assessment and Improvement

1. The governing body shall ensure that there is an effective, written, ongoing, facility-wide program designed to assess and improve the quality of resident care.

2. There shall be a written plan for assessing and improving quality that describes the objectives, organization, scope and mechanisms for overseeing the effectiveness of monitoring, evaluation and improvement activities. All organized services related to resident care, including services furnished by a contractor, shall be evaluated. The services provided by each LMHP shall be periodically evaluated to determine whether they are of an acceptable level of quality and appropriateness.

3. Assessment of quality shall address:

a. resident care problems;

b. cause of problems;

c. documented corrective actions; and

d. monitoring or follow-up to determine effectiveness of the corrective actions taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### §9037. Notifications

A. The facility shall comply with the following notification requirements.

1. The facility shall notify the department on the next working day in the event of temporary or permanent closing of the facility due to natural or man-made disasters or damage to the premises of the facility caused by fire, accident, or other elements that seriously affects the provision of services.

2. If a resident is absent without permission, the resident's parents or custodians are to be notified immediately.

B. The facility shall comply with the notification requirements regarding:

1. any case of suspected resident abuse or neglect;

2. each serious occurrence; and

3. the death of a resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### Subchapter D. Human Resources

##### §9041. Personnel

A. The PRTF shall have personnel policies which include, but are not limited to, defining staff, essential job functions, qualifications, and lines of authority.

1. The PRTF shall have:

a. a written plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members whether directly employed, contract or volunteer;

b. written personnel policies and written job descriptions for each staff position;

c. written employee grievance procedures; and

d. written nondiscrimination policy that shall ensure that the provider does not discriminate in the employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, veteran's status or any non-merit factor in accordance with all state and federal regulations.

2. The PRTF shall have written policies, contracts and practices to assure:

a. the availability of adequate psychiatric services to meet the following requirements:

i. provide medical oversight of all of the clinical aspects of care, and provide 24-hour, seven days per week psychiatric on-call coverage;

ii. assess each resident's medication and treatment needs including administration of medication; prescribe medications or otherwise assure the case management and consultation services are provided to obtain prescriptions, and prescribed therapeutic modalities to achieve the resident's individual treatment plan's goals; and

iii. participate in the facility's plan of care team and quality assessment and improvement process;

b. sufficient supervision of all residents 24 hours a day.

3. Staff Medical Requirements

a. The PRTF shall have policies and procedures that define how the facility will comply with current regulations regarding healthcare screenings of PRTF personnel.

b. The PRTF shall have policies and procedures and require all personnel to immediately report any signs or symptoms of a communicable disease or personal illness to their supervisor or administrator as appropriate for possible reassignment or other appropriate action to prevent the disease or illness from spreading to other residents or personnel.

B. There shall be a single organized professional staff that has the overall responsibility for the quality of all clinical care provided to patients, and for the ethical conduct and professional practices of its members, as well as for accounting to the governing body. The manner in which the professional staff is organized shall be consistent with the facility's documented staff organization and policies and shall pertain to the setting where the facility is located. The organization of the professional staff and its policies shall be approved by the facility's governing body.

C. The staff of a PRTF must have the appropriate qualifications to provide the services required by its

residents' comprehensive plans of care. Each member of the direct care staff may not practice beyond the scope of his/her license, certification or training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9043. Personnel Qualifications and Responsibilities**

A. Staffing Definitions. All experience requirements are related to paid experience. Volunteer work, college work/study or internship related to completion of a degree cannot be counted as work experience. If experience is in a part-time position, the staff person must be able to verify the amount of time worked each week. Experience obtained while working in a position for which the individual is not qualified may not be counted as experience.

1. - 2.b. Repealed.

B. Criminal History Investigation and References

1. The PRTF shall arrange for a criminal history investigation, as required by R.S. 15:587.1 for any applicant for employment, contractor, volunteer and other person who will provide services to the residents prior to that person working at the facility.

2. Staff criminal history investigations shall be maintained in a confidential manner, separate from the individual's personnel record.

C. Prohibitions

1. The facility is restricted from knowingly employing and/or contracting with a person who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of:

i. any criminal activity involving violence against a person;

ii. child abuse or neglect;

iii. possession, sale, or distribution of illegal drugs;

iv. sexual misconduct and/or is required to register pursuant to the Sex Offenders Registration Act; or

v. gross irresponsibility or disregard for the safety of others;

b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

2. The restrictions contained in this Subsection apply to employees and contractors who provide direct care to the residents of the facility.

3. Persons who are employed by the facility or who provide services to the facility may not use or be under the influence of, alcohol or illegal drugs during hours of work.

4. If a staff member is alleged to have committed an act described in §9043.C.1, the accused shall be removed from contact with residents until the allegations are resolved. If criminal charges are filed, the accused shall be removed from contact with residents until the charges are resolved.

a. A person who has received a deferred sentence for any charge in §9043.C.1 shall be removed from contact with residents for the duration of the deferment.

D. The PRTF shall check the Louisiana State Nurse Aide Registry and the Louisiana Direct Service Worker Registry to ensure that every individual providing direct care does not have a finding placed against him/her on either registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:63 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9045. Personnel Orientation and Training**

A. Orientation. Staff shall receive orientation within 30 days of employment.

1. Staff who will work with residents shall receive orientation before being assigned as the only staff responsible for residents.

2. Orientation includes, but is not limited to:

a. confidentiality;

b. grievance process;

c. fire and disaster plans;

d. emergency medical procedures;

e. organizational structure;

f. program philosophy;

g. personnel policy and procedure;

h. detecting and mandatory reporting of resident abuse;

i. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

j. basic skills required to meet the health needs and problems of the resident;

k. crisis de-escalation and the management of aggressive behavior including acceptable and prohibited responses;

l. physical restraint which is to include a practice element in the chosen method; and

m. safe administration and handling of all medications including psychotropic drugs, dosages and side effects.

3. Orientation may be counted toward the total training hours for the first year.

3.a - 6. Repealed.

B. The staff shall meet the following requirements for training.

1. Licensed mental health professionals (LMHPs), mental health professionals (MHPs), and mental health specialists (MHSs), with the exception of the administrator and clinical director shall obtain training according to the facility policy at least annually and as deemed necessary depending on the needs of the residents. The content of the training shall pertain to the roles and responsibilities of the position. Content areas shall include, but are not limited to:

a. crisis intervention and the use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;

b. child/youth development;

c. discipline;

d. stress management;

e. therapeutic relationship;

f. therapeutic intervention;

g. abuse prevention, detection, and reporting;

h. techniques to identify staff and resident behaviors, events, and environmental factors that may trigger emergency safety situations; and

i. the safe use of restraint and the safe use of seclusion, including the ability to recognize and respond to signs of physical distress or injury in residents who are restrained or in seclusion.

2. Certification in the use of cardiopulmonary resuscitation, including periodic recertification, along with an annual demonstration of competency in the use of cardiopulmonary resuscitation is required.

3. Staff training shall be provided by individuals who are qualified by education, training, and experience.

4. Staff training must include training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

5. Staff must be trained and demonstrate competency before participating in an emergency safety intervention.

6. All training programs and materials used by the facility must be available for review by HSS.

7. The PRTF shall maintain documentation of all of the training of its staff.

C. The provider shall complete and document an annual performance evaluation of all staff members. For any person who interacts with residents, the provider's performance evaluation procedures shall address the quality and nature of a staff member's relationships with residents.

C.1. - G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:63 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9047. Personnel Requirements**

A. Staffing Requirements. The PRTF shall meet minimum licensure requirements for staffing, staff qualifications and staffing ratios.

1. - 4. ...

B. The facility shall maintain a minimum ratio of one staff person for three residents (1:3) between the hours of 6 a.m. and 10 p.m. The staff for purposes of this ratio shall consist of direct care staff (i.e. licensed practical nurse (LPN), MHS, MHP, LMHP, etc.).

1. - 2. Repealed.

C. The facility shall maintain a minimum ratio of one staff person for four residents (1:4) between 10 p.m. and 6 a.m. Staff shall always be awake while on duty. The staff for purposes of this ratio shall consist of direct care staff (i.e. LPN, MHS, MHP, LMHP, etc.).

D. - E.13. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:65 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9049. Personnel Records**

A. The facility shall maintain on file a written personnel record for each employee working at the facility, which shall be kept for at least one year following an employee's separation from employment. The personnel record shall include:

1. - 3. ...

4. documentation of the successful completion of orientation, training and demonstrations of competency, the dates of completion and the names of the persons certifying

the completion of the orientation, training and demonstrations of competency;

5. date of employment; and

6. date and reason for leaving employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:66 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9051. Volunteers**

A. - B. ...

C. Volunteers shall work under the direct supervision of a paid staff member. They shall never be left alone or in charge of a resident or group of residents without a paid staff member present, unless they are a master's level or doctorate level student intern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:66 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **Subchapter E. Facility Operations**

##### **§9061. Food and Diet**

A. The provider shall ensure that a resident is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council. The facility shall ensure that dietary services are provided by a Louisiana licensed registered dietician. The registered dietician shall be available regarding the nutritional needs, the special diets of individual children, and to assist in the development of policies and procedures for the handling, serving, and storage of food.

1. Menus shall be written and approved annually in writing by a registered dietician.

2. The provider shall develop written menus at least one week in advance.

3. Written menus and records of foods purchased shall be maintained on file for 30 days. Menus shall provide for a sufficient variety of foods, vary from week to week and reflect all substitutions.

B. A person designated by the administrator shall be responsible for the total food service of the facility. This person shall be responsible for:

1. initiating food orders or requisitions;

2. establishing specifications for food purchases and insuring that such specifications are met;

3. storing and handling of food;

4. food preparation;

5. food serving;

6. orientation, training and supervision of food service personnel;

7. maintaining a current list of residents with special nutritional needs;

8. having an effective method of recording and transmitting diet orders and changes;

9. recording information in the resident's record relating to special nutritional needs; and

10. providing information on the resident's diets to the staff.

C. The provider shall ensure that any modified diet for a resident shall be:

1. prescribed by the resident's physician and treatment plan with a record of the prescription kept on file;

2. planned, prepared and served by persons who have received instruction from the registered dietician who has approved the menu for the modified diet.

D. The provider shall ensure that a resident is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast on the following day.

E. The provider shall ensure that the food provided to a resident in care of the provider is in accord with his/her religious beliefs.

F. No resident shall be denied food or force-fed for any reason except as medically required pursuant to a physician's written order. A copy of the order shall be maintained in the resident's file.

G. When meals are provided to staff, the provider shall ensure that staff members eat the same food served to residents in care, unless special dietary requirements dictate differences in diet.

H. The provider shall purchase and provide to the residents only food and drink of safe quality. The storage, preparation and serving techniques shall ensure that nutrients are retained and spoilage is prevented. Milk and milk products shall be Grade A and pasteurized.

I. The provider shall ensure that food served to a resident and not consumed is discarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:66 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9063. Admission, Transfer and Discharge Requirements**

A. The written description of admissions policies and criteria shall be provided to the department upon request, and made available to the client and his/her legal representative.

B. A PRTF shall not refuse admission to any client on the grounds of race, national origin, ethnicity or disability.

C. A PRTF shall admit only those residents whose needs, pursuant to the certification of need and comprehensive plan of Care, can be fully met by the facility.

D. When refusing admission to a client, the PRTF shall provide a written statement to the resident with the reason for the refusal. This shall be provided to the designated representative(s) of the department upon request.

E. To be admitted into a PRTF, the individual must have received Certification of Need from the department or the department's designee that recommends admission into the PRTF. The PRTF must ensure that requirements for certification are met prior to treatment commencing. The certification must specify that:

1. ambulatory care resources available in the community do not meet the treatment needs of the recipient;

2. proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

3. the services can reasonably be expected to improve the resident's condition or prevent further regression so that the services will no longer be needed.

4. - 9. Repealed.

F. The PRTF shall use the certification of need to develop an initial plan of care to be used upon admission until a Comprehensive Plan of Care is completed.

1. - 2. Repealed.

G. Discharge planning begins at the date of admission, and goals toward discharge shall be continually addressed in the interdisciplinary team meetings and when the comprehensive plan of care is reviewed.

1. - 3. Repealed.

H. Voluntary Transfer or Discharge. Upon notice by the resident or authorized representative that the resident has selected another provider or has decided to discontinue services, the PRTF shall have the responsibility of planning for the resident's voluntary transfer or discharge. The transfer or discharge responsibilities of the PRTF shall include:

1. holding a transfer or discharge planning conference with the resident, family, support coordinator, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge, unless the client declines such a meeting;

2. providing a current comprehensive plan of care. Upon written request and authorization by the resident or authorized representative, a copy of the current comprehensive treatment plan shall be provided to the resident or receiving provider;

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, developmental issues, behavioral issues, social issues, and nutritional status of the resident. Upon written request and authorization by the resident or authorized representative, a copy of the discharge summary shall be disclosed to the resident or receiving provider. The written discharge summary shall be completed within five working days of the notice by the resident or authorized representative that the resident has selected another provider or has decided to discontinue services. The provider's preparation of the discharge summary shall not impede or impair the resident's right to be transferred or discharged immediately if the resident so chooses; and

4. not coercing or interfering with the resident's decision to transfer. Failure to cooperate with the resident's decision to transfer to another provider may result in adverse action by the department.

I. - O.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:66 (January 2004), amended by the



## **§9065. Health Care and Nursing Services**

### **A. Health Care**

1. The provider shall have a written plan for providing preventive, routine and emergency medical and dental care for residents and shall show evidence of access to the resources outlined in the plan. This plan shall include:

- a. ongoing appraisal of the general health of each resident;
- b. provision of health education, as appropriate; and
- c. provisions for keeping resident's immunizations current.

2. The provider shall ensure that a resident receives timely, competent medical care when he/she is ill or injured. The provider shall notify the resident's parent or legal guardian, verbally/in writing, within 24 hours of a resident's illness or injury that requires treatment from a physician or hospital.

3. Records of all medical examinations, follow-ups and treatment together with copies of all notices to parent(s) or guardian(s) shall be kept in the resident's file.

4. Within 30 days of admission, the provider shall obtain documentation of a resident's immunization history, insuring that the resident has received all appropriate immunizations and booster shots that are required by the Office of Public Health.

5. - 7. Repealed.

### **B. Nursing Services**

1. There shall be an organized nursing service that provides 24-hour nursing services. The nursing services shall be under the direction and supervision of a registered nurse licensed to practice in Louisiana, employed full time, 40 hours per week during normal business hours.

2. Written nursing policies and procedures shall define and describe the resident care provided. There shall be a written procedure to ensure that all nursing services are performed by nurses and that all licensed nurses providing care in the PRTF have a valid and current Louisiana license to practice, prior to providing any care.

3. Nursing services are either furnished or supervised and evaluated by a registered nurse as determined by the needs of the residents.

4. There shall be at least one registered or licensed practical nurse on duty on site at all times.

### **C. Medications**

1. All PRTFs that store or dispense scheduled narcotics shall have a site-specific Louisiana dangerous substance license and a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with the Louisiana Uniform Controlled Dangerous Substance Act and Title 21 of the *United States Code*.

2. The provider shall have written policies and procedures that govern the safe administration and handling of all drugs as appropriate to the facility.

3. The provider shall have a written policy governing the self-administration of both prescription and nonprescription drugs.

4. The provider shall ensure that medications are either self-administered or administered by qualified persons according to state law.

5. The provider shall have a written policy for handling medication taken from the facility by residents on pass.

6. The provider shall ensure that any medication given to a resident for therapeutic and medical purposes is in accordance with the written order of a physician.

a. There shall be no standing orders for prescription medications.

b. There shall be standing orders, signed by the physician, for nonprescription drugs with directions from the physician indicating when he/she is to be contacted. Standing orders shall be updated annually by the physician.

c. Copies of all written orders shall be kept in the resident's file.

7. Proper disposal procedures shall be followed for all discontinued and outdated drugs and containers with worn, illegible or missing labels.

8. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

a. Drugs used externally and drugs taken internally shall be stored on separate shelves or in separate cabinets.

b. All drugs, including refrigerated drugs, shall be kept under lock and key.

9. The provider using psychotropic medications on a regular basis shall have a written description of the use of psychotropic medications including:

a. a description of procedures to ensure that medications are used as ordered by the physician for therapeutic purposes and in accordance with accepted clinical practice;

b. a description of procedures to ensure that medications are used only when there are demonstrable benefits to the resident unobtainable through less restrictive measures;

c. a description of procedures to ensure continual physician review of medications and discontinuation of medications when there are no demonstrable benefits to the resident; and

d. a description of an ongoing program to inform residents, staff, and where appropriate, resident's parent(s) or legal guardian(s) on the potential benefits and negative side-effects of medications and to involve residents and, where appropriate, their parent(s) or legal guardian(s) in decisions concerning medication.

10. All compounding, packaging, and dispensing of drugs, biologicals, legend and controlled substances shall be accomplished in accordance with Louisiana law and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

11. Dispensing of prescription legend or controlled substance drugs direct to the public or resident by vending machines is prohibited.

12. Current and accurate records shall be maintained on the receipt and disposition of all scheduled drugs. An annual inventory, at the same time each year, shall be conducted for all Schedule I, II, III, IV and V drugs.

13. Medications are to be dispensed only upon written orders, electromechanical facsimile, or oral orders from a physician or other legally authorized prescriber, and be taken by a qualified professional.

14. All drug containers shall be labeled to show at least the resident's full name, the chemical or generic drug's name, strength, quantity and date dispensed unless a unit dose system is utilized. Appropriate accessory and cautionary statements as well as the expiration date shall be included.

15. Drugs and biologicals that require refrigeration shall be stored separately from food, beverages, blood, and laboratory specimens.

16. Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician. An entry shall be made in the resident's record.

17. Abuses and losses of controlled substances shall be reported to the individual responsible for pharmaceutical services, the administrator, the Louisiana Board of Pharmacy, DHH Controlled Dangerous Substances Program and to the Regional Drug Enforcement Administration (DEA) office, as appropriate.

18. All drugs and biologicals shall be administered in accordance with the orders of the practitioner(s) responsible for the resident's care and accepted standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:67 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9067. Delivery of Services**

A. The PRTF shall have an on-going plan, consistent with available community and PRTF resources, to provide medical, dental, therapeutic, social, psychological, recreational, rehabilitative and educational services to meet the medically related needs of its residents.

##### **B. Arrangement of Residents into Groups**

1. The provider shall arrange residents into groups that effectively address the needs of the residents.

2. All residents shall have an opportunity to build relationships within small groups.

3. Residents shall be involved in decision making regarding the roles and routines of their living group to the degree possible considering their level of functioning.

4. No more than 15 residents shall be in a group or unit.

5. The PRTF shall have a distinct unit for minors.

6. Groups shall be separated by gender.

C. The services provided by the PRTF must involve active treatment.

1. The team of professionals who shall develop the comprehensive plan of care shall be composed of physician(s) and other personnel who are employed by, or who provide services to the recipient in the facility. The team must be capable of assessing the recipient's immediate and long-range therapeutic needs, personal strengths and liabilities, potential resources of the recipient's family, capable of setting treatment objectives, and prescribing therapeutic modalities to achieve the plan's objectives. The team must include, at a minimum, either:

- a. a board-certified or board-eligible psychiatrist; or
- b. a licensed clinical psychologist who has a doctorate degree and a physician licensed to practice medicine or osteopathy; or

c. a physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases and a psychologist who has a master's degree in clinical psychology.

2. The team must also include one of the following:

a. a psychiatric social worker;

b. a registered nurse with specialized training or one year of experience in treating individuals with mental illness;

c. a licensed occupational therapist with specialized training, or one year of experience in treating individuals with mental illness; or

d. a psychologist who has a master's degree in clinical psychology or who is licensed pursuant to R.S. 37:2351 et seq. or is a licensed medical psychologist pursuant to R.S. 37:1360.51.

4. The comprehensive plan of care is a written plan developed for each recipient to improve the recipient's condition to the extent that inpatient care is no longer necessary. The plan must:

a. be based on a diagnostic evaluation that includes examination of the medical, psychosocial, social, behavioral, and developmental aspects of the recipient's situation and reflects the need for PRTF services, including:

i. diagnoses, symptoms, complaints, and complications indicating the need for admission;

ii. a description of the functional level of the individual;

iii. any orders for medication and diet;

iv. restorative, social, and rehabilitation services;

v. treatment objectives;

vi. an integrated program of therapies, activities, and experiences designed to meet the objectives;

vii. plans for continued care, as appropriate; and

viii. post-discharge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the recipient's family, school, and community upon discharge;

b. be developed and implemented no later than 14 days after the recipient's admission; and

c. be designed to achieve the recipient's discharge at the earliest possible time.

5. The plan must be reviewed as needed, but at a minimum of every 30 days by the facility treatment team to determine that services being provided are, or were, required on an inpatient basis and recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

D. The provider shall ensure that any provider of professional or special services (internal or external to the agency) meets the following:

1. are adequately qualified and, where appropriate, currently licensed or certified according to state or federal law;

2. have adequate space, facilities and privacy;

3. have appropriate equipment;

4. have adequate supplies;

5. have appropriate resources.

E. The PRTF shall also have an effective, on-going discharge planning program that facilitates the provision of

follow-up care. The plan of care shall include, at an appropriate time, post-discharge plans and coordination of inpatient services, with partial discharge plans and related community services to ensure continuity of care with the recipient's family, school and community upon discharge. Each resident's record shall be annotated with a note regarding the nature of post PRTF care arrangements. Discharge planning shall be initiated in a timely manner. Residents, along with necessary medical information (e.g., the resident's functional capacity, nursing and other care requirements, discharge summary, referral forms) shall be transferred or referred to appropriate facilities, agencies or services, as needed, for follow-up or ancillary care.

F. The PRTF shall provide or have available a therapeutic activities program.

1. The program must be appropriate to the needs and interests of patients and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

2. The number of qualified therapists, support personnel and consultants shall be adequate to provide comprehensive therapeutic activities consistent with each patient's treatment plan.

G. The provider shall have a written plan for insuring that a range of indoor and outdoor recreational and social opportunities are provided for residents. Such opportunities shall be based on both the individual interests and needs of the resident and the composition of the living group.

1. The provider shall be adequately staffed and have appropriate recreation spaces and facilities accessible to residents.

2. Any restrictions of recreational and social opportunities shall be specifically described in the treatment plan, together with the reasons such restrictions are necessary and the extent and duration of such restrictions.

3. The PRTF shall provide a minimum of three hours per week of social and/or recreational activities.

H. The provider shall have a program to ensure that residents receive training in independent living skills appropriate to their age and functioning level. This program shall include instruction in:

1. hygiene and grooming;
2. laundry and maintenance of clothing;
3. appropriate social skills;
4. housekeeping;
5. budgeting and shopping;
6. cooking; and
7. punctuality, attendance and other employment-related matters.

I. Each resident must have a minimum of one face-to-face contact with a psychiatrist each month and additional contacts for individuals from special risk populations, and as clinical needs of the resident dictate.

J. The services of qualified professionals and specialists from the following areas shall be provided by and in the PRTF when necessary to meet the needs of the residents:

1. medicine and dentistry;
2. nursing;
3. speech, occupational, and physical therapies;
4. psychology and psychiatry;
5. social work;
6. laboratory and diagnostic/radiology services;

7. optometry or ophthalmology; and
8. pharmacy activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:68 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9069. Transportation**

A. The PRTF shall ensure that each resident is provided with the transportation necessary for implementation of the resident's treatment plan.

B. The PRTF shall provide or arrange transportation of its residents to and from the facility and is responsible for the safety of the residents during transport.

C. If the PRTF arranges transportation for participants through a transportation agency, the facility shall maintain a written contract which is signed by a facility representative and a representative of the transportation agency. The contract shall outline the circumstances under which transportation will be provided.

1. The written contract shall be dated and time limited and shall conform to these licensing regulations.

2. The transportation agency shall maintain in force at all times current commercial liability insurance for the operation of transportation vehicles, including medical coverage for residents in the event of an accident or injury. The PRTF shall maintain documentation of the insurance which shall consist of the insurance policy or current binder that includes the name of the transportation agency, the name of the insurance agency, policy number, and period of coverage and an explanation of the coverage.

D. Transportation arrangements shall conform to state laws, including laws governing the use of seat belts and resident restraints. Vehicles shall be accessible for people with disabilities or so equipped to meet the needs of the residents served by the PRTF.

E. The driver or attendant shall not leave a resident unattended in the vehicle at any time.

F. Vehicle and Driver Requirements

1. The vehicle shall be maintained in good repair with evidence of an annual safety inspection.

2. The use of tobacco in any form, use of alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns (loaded or unloaded) in any vehicle while transporting residents is prohibited.

3. The number of persons in a vehicle used to transport resident shall not exceed the manufacturer's recommended capacity.

4. The facility shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport resident on behalf of the PRTF.

5. The facility shall maintain in force at all times current commercial liability insurance for the operation of its vehicles, including medical coverage for residents in the event of accident or injury.

a. The policy shall extend coverage to any staff member who provides transportation for any resident in the course and scope of his/her employment.

b. Documentation shall consist of the insurance policy or current binder that includes the name of the PRTF, the name of the insurance company, policy number, period of coverage, and explanation of the coverage.

6. The vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in each facility or contracted vehicle.

8. Each driver or attendant shall be provided with a current master transportation list including each resident's name, pick-up and drop-off locations, and authorized persons to whom the resident may be released. Documentation shall be maintained on file at the PRTF whether transportation is provided by the facility or contracted.

9. The driver or attendant shall maintain an attendance record for each trip. The record shall include the driver's name, the date, names of all passengers (resident and adults) in the vehicle, and the name of the person to whom the resident was released and the time of release. Documentation shall be maintained on file at the facility whether transportation is provided by the facility or contracted.

10. There shall be information in each vehicle identifying the name of the administrator and the name, telephone number, and address of the facility for emergency situations.

#### G. Resident Safety Provisions

1. The driver plus one appropriately trained staff member shall be required at all times in each vehicle when transporting any resident. Staff shall be appropriately trained on the needs of each resident.

2. Each resident shall be safely and properly:

- a. assisted into the vehicle;
- b. restrained in the vehicle; and
- c. assisted out of the vehicle.

3. Every resident shall be restrained in a single safety belt or secured in an American Academy of Pediatrics recommended, age appropriate safety seat.

4. The driver or appropriate staff person shall check the vehicle at the completion of each trip to ensure that no resident is left on the vehicle. Documentation shall include the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the PRTF whether transportation is provided by the facility or contracted.

5. During field trips, the driver or staff member shall check the vehicle and account for each resident upon arrival at, and departure from, each destination to ensure that no resident is left on the vehicle or at any destination. Documentation shall include the signature of the person conducting the check and the time the vehicle was checked for each loading and unloading of residents during the field trip.

6. Appropriate staff person(s) shall be present when each resident is delivered to the facility.

H. The provider shall have the means of transporting residents in cases of emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### §9071. Resident Rights and Grievance Procedure

A. Every resident shall have the following rights, none of which shall be abridged by the PRTF or any of its staff. The PRTF administrator shall be responsible for developing and implementing policies to protect resident rights and to respond to questions and grievances pertaining to resident rights. These rights shall include at least the following:

1. every resident, or his/her designated representative, shall whenever possible, be informed of the resident's rights and responsibilities in advance of furnishing or discontinuing resident care;

2. the right to have a family member, chosen representative and/or his or her own physician notified promptly of admission to the PRTF;

3. the right to receive treatment and medical services without discrimination based on race, age, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay or source of payment;

4. the right to be treated with consideration, respect and recognition of their individuality, including the need for privacy in treatment;

5. the right to receive, as soon as possible, the services of a translator or interpreter, if needed, to facilitate communication between the resident and the PRTF's health care personnel;

6. the right to participate in the development and implementation of his/her plan of care;

7. every resident or his/her representative (as allowed by state law) has the right to make informed decisions regarding his/her care;

8. the resident's rights include being informed of his/her health status, and being involved in care planning and treatment;

9. the right to be included in experimental research only when he/she gives informed, written consent to such participation, or when a guardian provides such consent for an incompetent resident in accordance with appropriate laws and regulations. The resident may refuse to participate in experimental research, including the investigations of new drugs and medical devices;

10. the right to be informed if the PRTF has authorized other health care and/or educational institutions to participate in the resident's treatment. The resident shall also have a right to know the identity and function of these institutions;

11. the right to be informed by the attending physician and other providers of health care services about any continuing health care requirements after the resident's discharge from the PRTF. The resident shall also have the right to receive assistance from the physician and appropriate PRTF staff in arranging for required follow-up care after discharge;

12. the right to consult freely and privately with his/her parent(s) or legal guardian(s);

13. the right to consult freely and privately with legal counsel, as well as the right to employ legal counsel of his/her choosing;

14. the right to make complaints without fear of reprisal;

15. the opportunity for telephone communication;

16. the right to send and receive mail;

17. the right to possess and use personal money and belongings, including personal clothing, in accordance with the facility's policies;

18. the right to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the resident's treatment plan. Special restrictions shall be imposed only to prevent serious harm to the resident. The reasons for any special restrictions shall be recorded in the resident's treatment plan;

19. the right to have the individual resident's medical records, including all computerized medical information, kept confidential;

20. the right to access information contained in his/her medical records within a reasonable time frame subject to the exception contained in §9035.L.1.f;

21. the right to be free from all forms of abuse and harassment;

22. the right to receive care in a safe setting;

23. the right to be informed in writing about the PRTF's policies and procedures for initiation, review and resolution of resident complaints;

24. the provider shall ensure that each resident has access to appropriate educational services consistent with the resident's abilities and needs, taking into account his/her age and level of functioning;

25. the provider shall have a written description regarding the involvement of the resident in work including:

a. a description of any unpaid tasks required of the resident;

b. a description of any paid work assignments including the pay scales for such assignments;

c. a description of the provider's approach to supervising work assignments;

d. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws;

e. all work assignments shall be in accordance with the resident's treatment plan;

f. the provider shall assign as unpaid work for the resident only housekeeping tasks similar to those performed in a normal family home. Any other work assigned shall be compensated, at such rate and under such conditions as the resident might reasonably be expected to receive for similar work in outside employment;

26. every resident shall be permitted to attend religious services in accordance with his/her faith. Residents shall not be forced to attend religious services; and

27. in addition to the rights listed herein, residents have the rights provided in the Louisiana Mental Health Law.

#### B. Grievance Procedure for Residents

1. The provider shall have a written grievance procedure for residents designed to allow residents to make complaints without fear of retaliation.

2. The provider shall document that the resident and the resident's parent(s) or legal guardian(s) are aware of and understand the grievance procedure.

3. The provider shall document the resolution of the grievance in the resident's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## Subchapter F. Physical Environment

### §9075. General Provisions

A. The PRTF shall be constructed, arranged and maintained to ensure the safety and well being of the resident.

#### B. Buildings

1. The buildings shall reflect good housekeeping and shall by means of an effective pest control program, be free of insects and rodents.

2. The PRTF shall maintain PRTF-wide ventilation, lighting and temperature controls.

3. There shall be a policy regarding the provision of services during any period in which the supply of electricity, natural gas, water and fuel is temporarily disrupted.

4. Doors leading into a facility or unit may be locked only in the direction of ingress.

5. Doors in the line of egress shall not be locked. Any deviation to allow the outermost doors in the line of egress to be locked may only be made after approval has been given by the Office of the State Fire Marshal.

C. All PRTFs shall comply with established fire protection standards and enforcement policies as promulgated by the Office of State Fire Marshal, including handicapped accessibility requirements.

1. Prior to new construction, additions, conversions or major alterations, PRTFs shall submit construction documents to the OSFM for review.

D. The PRTF shall comply with the rules, Sanitary Code and enforcement policies as promulgated by the Office of Public Health (OPH).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §9077. Interior Space

A. The arrangement, appearance and furnishing of all of the interior areas of the facility shall be similar to those of a normal family home within the community.

B. The provider shall ensure that there is evidence of routine maintenance and cleaning programs in all of the areas of the facility.

1. - 7. Repealed.

C. Each living unit of a facility shall contain a space for the free and informal use of the residents. This space shall be constructed and equipped in a manner in keeping with the programmatic goals of the facility.

D. A facility shall have a minimum of 60 square feet of floor area per resident in living areas accessible to the residents and excluding halls, closets, bathrooms, bedrooms, staff or staff's family quarters, laundry areas, storage areas and office areas.

#### E. Resident Bedrooms

1. Single rooms must contain at least 80 square feet and multi-bed rooms shall contain at least 60 square feet per bed, exclusive of fixed cabinets, fixtures, and equipment.

2. All PRTFs shall have bedroom space that does not permit more than two residents per designated bedroom.

a. Exception. If the facility maintains a valid child residential license from DCFS, has more than two residents per bedroom and is converting to a PRTF, the PRTF may have bedroom space that allows no more than four residents per designated bedroom.

3. Rooms shall have at least a 7 1/2 foot ceiling height over the required area. In a room with varying ceiling height, only portions of the room with a ceiling height of at least 7 1/2 feet are allowed in determining usable space.

4. There shall be at least 3 feet between beds.

5. There shall be sufficient and satisfactory separate storage space for clothing, toilet articles and other personal belongings of residents.

6. There shall be at least one toilet bowl with accessories, lavatory basin and bathing facility reserved for resident use on each resident floor and additional toilets, lavatories, and bathing facilities to adequately meet the needs of employees, professional personnel and residents on each unit.

7. Doors to individual bedrooms shall not be equipped with locks or any other device that would prohibit the door from being opened from either side.

8. The provider shall not use any room that does not have a window as a bedroom space.

9. The provider shall ensure that sheets, pillow, bedspread and blankets are provided for each resident. Enuretic residents shall have mattresses with moisture resistant covers. Sheets and pillowcases shall be changed at least weekly, but shall be changed more frequently if necessary.

10. Each resident shall have his/her own dresser or other adequate storage space for private use and designated space for hanging clothing in proximity to the bedroom occupied by the resident.

11. No resident over the age of five years shall occupy a bedroom with a member of the opposite sex.

12. The provider shall ensure that the ages of residents sharing bedroom space are not greater than four years in difference unless contraindicated based on diagnosis, the treatment plan, or the behavioral health assessment of the resident.

13. Each client shall have his/her own bed. A client's bed shall be longer than the client is tall, no less than 30 inches wide, of solid construction and shall have a clean, comfortable, nontoxic fire retardant mattress.

14. Mobile homes shall not be used for resident sleeping areas.

15. The use of bunk beds is prohibited in resident bedrooms.

16. If the PRTF has a sexually-based treatment program, the residents of that program shall reside in its own unit or wing of the PRTF that is separate from the unit or wing housing the other residents. Residents of the sexually-based treatment program shall reside in single rooms with only one bed per bedroom.

#### F. Dining Areas

1. The facility shall have dining areas that permit residents, staff and guests to eat together in small groups.

2. A facility shall have dining areas that are clean, well lit, ventilated, and attractively furnished.

#### G. Bathrooms

1. A facility shall have wash basins with hot and cold water, flush toilets, and bath or shower facilities with hot and cold water according to resident care needs.

a. Bathrooms shall be so placed as to allow access without disturbing other resident during sleeping hours.

b. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless residents are individually given such items. Residents shall be provided individual items such as hair brushes and toothbrushes.

c. Tubs and showers shall have slip proof surfaces.

d. The PRTF shall have at a minimum the following:

i. one lavatory per eight male residents and one lavatory per eight female residents;

ii. one toilet per eight male residents and one toilet per eight female residents; and

iii. one shower or tub per eight male residents and one shower or tub per eight female residents.

2. A facility shall have toilets and baths or showers that allow for individual privacy unless the residents in care require assistance.

3. Toilets, wash basins and other plumbing or sanitary facilities in a facility shall, at all times, be maintained in good operating condition and shall be kept free of any materials that might clog or otherwise impair their operation.

4. - 7. Repealed.

#### H. Kitchens

1. Kitchens used for meal preparations shall have the equipment necessary for the preparation, serving, storage, and clean up of all meals regularly served to all of the residents and staff. All equipment shall be maintained in proper working order.

2. The provider shall ensure that all dishes, cups and glasses used by residents are free from chips, cracks or other defects and are in sufficient number to accommodate all residents.

3. - 9. Repealed.

#### I. Administrative and Counseling Area

1. The provider shall provide a space that is distinct from resident's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. The provider shall have a designated space to allow private discussions and counseling sessions between individual residents and staff, excluding, bedrooms and common living areas.

#### J. Furnishings

1. The provider shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of residents shall be appropriately designed to suit the size and capabilities of the residents.

2. The provider shall promptly replace or repair broken, run-down, or defective furnishings and equipment.

#### K. Doors and Windows

1. The provider shall provide insect screens for all windows that can be opened. The screens shall be in good repair and readily removable in emergencies.

2. The provider shall ensure that all closets, bedrooms and bathrooms are equipped with doors that can be readily opened from both sides.

3. Windows or vents shall be arranged and located so that they can be opened from the inside to permit venting of combustion products and to permit occupants direct access to fresh air in emergencies. The operation of windows shall be restricted to inhibit possible escape or suicide. If the PRTF has an approved engineered smoke control system, the windows may be fixed. Where glass fragments pose a hazard

to certain residents, safety glazing and/or other appropriate security features shall be used. There shall be no curtain or venetian blind chords.

#### L. Storage

1. The provider shall ensure that there are sufficient and appropriate storage facilities.

2. The provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

#### M. Electrical Systems

1. The provider shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and in safe condition.

2. The provider shall ensure that any room, corridor or stairway within a facility shall be well lit.

#### N. Heating, Ventilation and Air Conditioning

1. The provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of all clients.

2. The provider shall not use open flame heating equipment or portable electrical heaters.

3. All gas heating units and water heaters must be vented adequately to carry the products of combustion to the outside atmosphere. Vents must be constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with the recommended procedures of the American Gas Association Testing Laboratories, Inc.

4. All heating units must be provided with a sufficient supply of outside air so as to support combustion without depletion of the air in the occupied room.

O. Smoking shall be prohibited in all areas of the PRTF.

P. The layout, design of details, equipment and furnishings shall be such that patients shall be under close observation and shall not be afforded opportunities for hiding, escape or injury to themselves or others. The environment of the unit shall be characterized by a feeling of openness with emphasis on natural light and exterior views. Interior finishes, lighting and furnishings shall suggest a residential rather than an institutional setting while conforming with applicable fire safety codes. Security and safety devices shall not be presented in a manner to attract or challenge tampering by patients.

#### Q. Seclusion Room

1. A PRTF shall have a seclusion room. This room shall be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets.

2. The room(s) shall be either located for direct nursing staff supervision or observed through the use of electronic monitoring equipment. If electronic monitoring equipment is used, it shall be connected to the facility's emergency electrical source.

3. Each room shall be for single occupancy and contain at least 60 square feet. It shall be constructed to prevent patient hiding, escape, injury or suicide.

R. Where grab bars are provided, they shall be institutional type, shall not rotate within their fittings, be securely fastened with tamper-proof screw heads, and shall be free of any sharp or abrasive elements. If grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1 1/2 inches.

S. Where towel racks, closet and shower curtain rods are provided, they shall be the breakaway type.

T. Plastic bags and/or trash can liners shall not be used in patient care areas.

U. Electrical receptacles shall be of the safety type or protected by 5-milliamperere ground-fault-interrupters.

V. The provider shall have a laundry space complete with washers and dryers that are sufficient to meet the needs of the residents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:68 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §9079. Facility Exterior

A. The provider shall maintain all areas of the facility that are accessible to the residents in good repair and free from any reasonably foreseeable hazard to health or safety. All structures on the grounds of the facility shall be maintained in good repair.

1. Garbage and rubbish stored outside shall be secured in noncombustible, covered containers and shall be removed on a regular basis.

2. Trash collection receptacles and incinerators shall be separate from recreation/play areas and located as to avoid being a nuisance.

3. Recreation/playground equipment shall be so located, installed, and maintained as to ensure the safety of the residents.

4. Areas determined unsafe, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced or have natural barriers to protect residents.

5. Fences that are in place shall be in good repair.

6. Residents shall have access to safe, suitable outdoor recreational space and age appropriate equipment.

7. The provider shall ensure that exterior areas are well lit at night.

B. - I. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:69 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §9081. Equipment

A. Equipment shall be clean and in good repair for the safety and well-being of the residents.

1. - 4. Repealed.

B. Therapeutic, diagnostic and other resident care equipment shall be maintained and serviced in accordance with the manufacturer's recommendations.

1. - 4. Repealed.

C. Methods for cleaning, sanitizing, handling and storing of all supplies and equipment shall be such as to prevent the transmission of infection.

1. - 17. Repealed.

D. After discharge of a resident, the bed, mattress, cover, bedside furniture and equipment shall be properly cleaned. Mattresses, blankets and pillows assigned to residents shall

be in a sanitary condition. The mattress, blankets and pillows used for a resident with an infection shall be sanitized in an acceptable manner before they are assigned to another resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:69 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **Subchapter G. Emergency Preparedness**

#### **§9083. Safety and Emergency Preparedness**

A. The PRTF shall have an emergency preparedness plan designed to manage the consequences of medical emergencies, power failures, fire, natural disasters, declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its emergency preparedness plan in the event or occurrence of a disaster or emergency.

B. Upon the department's request, a facility shall present its emergency preparedness plan for review. At a minimum, the emergency preparedness plan shall include and address the following.

1. The emergency preparedness plan shall be individualized and site specific. All information contained in the plan shall be current and correct. The plan shall be made available to representatives of the Office of the State Fire Marshal and the Office of Public Health upon request of either of these offices. The facility's plan shall follow all current applicable laws, standards, rules or regulations.

2. The facility's plan shall be submitted to the parish or local Office of Homeland Security and Emergency Preparedness (OHSEP) yearly and verification of this submittal maintained in the plan. Any recommendations by the parish or local OHSEP regarding the facility's plan shall be documented and addressed by the PRTF.

3. The facility's plan shall contain census information, including transportation requirements for the PRTF residents as to the need for:

a. wheelchair accessible or para-transit vehicle transport; or

b. the numbers of PRTF residents that do not have any special transport needs.

4. The plan shall contain a clearly labeled and legible master floor plan(s) that indicate the following:

a. the areas in the facility, either in the resident's individual unit or apartment or the PRTF, that is to be used by residents as shelter or safe zones during emergencies;

b. the location of emergency power outlets (if none are powered or all are powered, this shall be stated on the plan);

c. the locations of posted, accessible, emergency information;

d. the plan shall provide for floor plans or diagrams to be posted in each resident's room and shall clearly indicate that specific room or apartment's location, the fire exits, the fire evacuation routes, locations of alarm boxes and fire extinguishers, and written fire evacuation procedures shall be included on one plan; and

i. a separate floor plan or diagram with safe zones or sheltering areas for non fire emergencies shall

indicate areas of building, apartments, or rooms that are designated as safe or sheltering areas;

e. the detail of what will be powered by emergency generator(s), if applicable.

C. The facility's plan shall be viable and promote the health, safety and welfare of the facility's residents. If the plan is found to be deficient the facility shall, within 10 days of notification, respond with an acceptable plan of correction to amend its emergency preparedness plan.

1. - 5. Repealed.

D. The facility will work in concert with the local OHSEP or Office of Emergency Preparedness (OEP) in developing plans.

1. - 5. Repealed.

E. The facility shall provide a plan for monitoring weather warnings and watches and evacuation orders from local and state emergency preparedness officials. This plan will include:

1. who will monitor;

2. what equipment will be used; and

3. procedures for notifying the administrator or responsible persons.

F. The plan shall provide for the delivery of essential care and services to residents during emergencies, who are housed in the facility or by the facility at another location, during an emergency.

G. The plan shall contain information about staffing when the PRTF is sheltering in place or when there is an evacuation of the PRTF. Planning shall include documentation of staff that have agreed to work during an emergency and contact information for such staff. The plan shall include provisions for adequate, qualified staff as well as provisions for the assignment of responsibilities and duties to staff.

H. The facility shall have transportation or arrangements for transportation for evacuation, hospitalization, or any other services which are appropriate. Transportation or arrangements for transportation shall be adequate for the current census and meet the ambulatory needs of the residents.

I. The plan shall include procedures to notify the resident's family or responsible representative whether the facility is sheltering in place or evacuating to another site. The plan shall include which staff is responsible for providing this notification. If the facility evacuates, notification shall include:

1. the date and approximate time that the facility is evacuating; and

2. the place or location to which the facility is evacuating, including the:

a. name;

b. address; and

c. telephone number.

J. The plan shall include the procedure or method whereby each facility resident has a manner of identification attached to his person which remains with him at all times in the event of sheltering in place or evacuation, and whose duty and responsibility this will be. The following minimum information shall be included with the resident:

1. current and active diagnosis;

2. medications, including dosage and times administered;



3. allergies;
4. special dietary needs or restrictions; and
5. next of kin or responsible person and contact information.

K. The plan shall include an evaluation of the building and necessary systems to determine the ability to withstand wind, flood, and other local hazards that may affect the facility. If applicable, the plan shall also include an evaluation of each generator's fuel source(s), including refueling plans and fuel consumption.

L. The plan shall include an evaluation of the facility's surroundings to determine lay-down hazards, objects that could fall on the facility, and hazardous materials in or around the facility, such as:

1. trees;
2. towers;
3. storage tanks;
4. other buildings;
5. pipe lines;
6. chemicals;
7. fuels; or
8. biologics.

M. For PRTFs that are geographically located south of Interstate 10 or Interstate 12, the plan shall include the determinations of when the facility will shelter in place and when the facility will evacuate for a hurricane and the conditions that guide these determinations.

1. A facility is considered to be sheltering in place for a storm if the facility elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength or a stronger storm.

NOTE: Tropical storm strength shall be defined as a tropical cyclone in which the maximum sustained surface wind speed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph 17.5 m/s) to 63 kt (73 mph 32.5 mps).

2. If sheltering in place, the facility has elected to take this action after reviewing all available and required information on the storm, the facility, the facility's surroundings, and consultation with the local or parish OHSEP.

3. The facility accepts all responsibility for the health and well-being of all residents that shelter with the facility before, during, and after the storm. In making the decision to shelter in place or evacuate, the facility shall consider the following:

- a. what conditions will the facility shelter for;
- b. what conditions will the facility close or evacuate for; and
- c. when will these decisions be made.

4. If the facility shelters in place, the facility's plan shall include provisions for seven days of necessary supplies to be provided by the facility prior to the emergency event, to include drinking water or fluids and non-perishable food.

N. The facility's emergency plan shall include a posted communications plan for contacting emergency services and monitoring emergency broadcasts and whose duty and responsibility this will be.

O. The facility's plan shall include how the PRTF will notify OHSEP and DHH when the decision is made to shelter in place and whose responsibility it is to provide this notification.

P. The facility shall have a plan for an on-going safety program to include:

1. continuous inspection of the facility for possible hazards;
2. continuous monitoring of safety equipment and maintenance or repair when needed;
3. investigation and documentation of all accidents or emergencies;
4. fire control and evacuation planning with documentation of all emergency drills:
  - a. residents can be informed of emergency drills;
5. all aspects of the facility's plan, planning, and drills shall meet the current requirements of the Office of the State Fire Marshal, and the Life Safety Code National Fire Protection Association (NFPA) 101; and
6. the facility shall inform the resident and/or responsible party of the facility's emergency plan and the actions to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:70 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9085. Emergency Plan Activation, Review, and Summary**

A. The facility's emergency plan(s) shall be activated at least annually, either in response to an emergency or in a planned drill. All staff shall be trained and have knowledge of the emergency plan.

1. - 30. Repealed.

B. PRTFs must conduct a minimum of 12 fire drills annually with at least one every three months on each shift. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, and other natural disasters.

1. All staff shall participate in at least one drill annually. Residents shall be encouraged to participate, but the provider may not infringe upon the right of the resident to refuse to participate.

a. - b. Repealed.

2. The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

a. - j. Repealed.

3. Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable NFPA requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

3.a. - 9.d. Repealed.

C. The facility's performance during the activation of the plan shall be evaluated annually by the facility and the findings shall be documented in the plan.

1. - 3. Repealed.

D. The plan shall be revised if indicated by the facility's performance during the emergency event or the planned drill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:71 (January 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9087. Notification**

A. Emergency preparedness procedures shall specify the following:

1. persons to be notified;
  2. process of notification;
  3. verification of notification;
  4. locations of emergency equipment and alarm signals;
  5. evacuation routes;
  6. procedures for evacuating residents;
  7. procedures for re-entry and recovery;
  8. frequency of fire drills;
  9. tasks and responsibilities assigned to all personnel;
- and
10. medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

B. A PRTF shall immediately notify the department and other appropriate agencies of any fire, disaster or other emergency that may present a danger to residents or require their evacuation from the facility.

C. In the event that a PRTF evacuates, temporarily relocates or temporarily ceases operations at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP, the PRTF must immediately give notice to the Health Standards Section and OHSEP by facsimile or email of the following:

1. the date and approximate time of the evacuation;
- and
2. the locations of where the residents have been placed, whether this location is a host site for one or more of the PRTF residents.

D. In the event that a PRTF evacuates, temporarily relocates or temporarily ceases operations at its licensed location for any reason other than an evacuation order, the PRTF must immediately give notice to the Health Standards Section by facsimile or email of the following:

1. the date and approximate time of the evacuation;
- and
2. the locations of where the residents have been placed, whether this location is a host site for one or more of the PRTF residents.

E. If there are any deviations or changes made to the locations of the residents that was given to the Health Standards Section and OHSEP, then both Health Standards and OHSEP shall be notified of the changes within 48 hours of their occurrence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§9089. Authority to Re-Open After an Evacuation, Temporary Relocation or Temporary Cessation of Operation**

A. In the event that a PRTF evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state, local, or parish OHSEP, due to a declared disaster or other emergency, and that facility sustains damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Health Standards Section, and the facility has received a letter of approval from the department for reopening the facility.

1. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

B. If a PRTF evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state or parish OHSEP, due to a declared disaster or other emergency, and the facility does not sustain damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility may be reopened without the necessity of the required surveys.

1. Prior to reopening, the facility shall notify the Health Standards Section in writing that the facility is reopening.

C. The facility shall submit a written initial summary report to the department's Health Standards Section. This report shall be submitted within 14 days from the date of the emergency event which led to the facility having to evacuate, temporarily relocate or temporarily cease operations. The report shall indicate how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of the injuries and deaths.

D. If a facility shelters in place at its licensed location during a declared disaster or other emergency, the facility shall submit a written initial summary report to the department's Health Standards Section. This report shall be submitted within 14 days from the date of the emergency event which led to the facility having to shelter in place. The report shall indicate how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;

2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

E. Upon request by the department's Health Standards Section, a report that is more specific and detailed regarding the facility's execution of their emergency plan shall be submitted to the department.

F. Inactivation of License due to Declared Disaster or Emergency

1. A licensed PRTF licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

a. the licensed PRTF provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

i. the PRTF has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster;

ii. the licensed PRTF intends to resume operation as a PRTF in the same service area;

iii. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

iv. includes an attestation that all residents have been properly released or transferred to another provider; and

v. provides a list of each resident's name and the location where that resident has been released or transferred to;

b. the licensed PRTF resumes operating as a PRTF in the same service area within one year of the issuance of such an executive order or proclamation of emergency or disaster;

c. the licensed PRTF continues to pay all fees and costs due and owed to the department including, but not limited to:

i. annual licensing fees; and

ii. outstanding civil monetary penalties; and

d. the licensed PRTF continues to submit required documentation and information to the department, including but not limited to cost reports.

2. Upon receiving a completed written request to inactivate a PRTF license, the department shall issue a notice of inactivation of license to the PRTF.

3. Upon completion of repairs, renovations, rebuilding or replacement of the facility, a PRTF which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

a. the PRTF shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening;

b. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing survey;

c. the license reinstatement request shall include a completed licensing application with appropriate licensing fees, approval from the Office of Public Health and the Office of State Fire Marshal; and

d. the provider resumes operating as a PRTF in the same service area within one year.

4. Upon receiving a completed written request to reinstate a PRTF license, the department shall schedule a licensing survey. If the PRTF meets the requirements for licensure and the requirements under this Subsection, the department shall issue a notice of reinstatement of the PRTF license.

5. No change of ownership in the PRTF shall occur until such PRTF has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as a PRTF.

6. The provisions of this Subsection shall not apply to a PRTF which has voluntarily surrendered its license and ceased operation.

7. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the PRTF license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Subchapter H. Additional Requirements for Mental Health PRTFs**

### **§9091. General Provisions**

A. A mental health PRTF is a PRTF that provides inpatient psychiatric services to its residents who are suffering from mental illness, or who are suffering from co-occurring mental illness and a substance abuse/addiction disorder. In addition to the provisions applicable to all PRTFs, a mental health PRTF shall comply with the provisions of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§9093. Personnel Qualifications, Responsibilities, and Requirements**

A. A mental health PRTF shall have the following minimum personnel:

1. Administrator. The administrator must have a Bachelor's degree from an accredited college or university in a mental health-related field, plus at least five years of related experience. The administrator is responsible for the on-site, daily implementation and supervision of the overall facility's operation commensurate with the authority conferred by the governing body.

a. Grandfathering Provision. For a facility with a current child residential license from DCFS at the time of

the promulgation of this rule, the current administrator may remain the administrator of the facility provided the following conditions are met.

i. The administrator has been the administrator on a full time basis for the facility for at least five years.

ii. The administrator was approved by the governing body to hold the position of administrator of the PRTF.

iii. An administrator under this grandfathering provision may not transfer as an administrator to another PRTF.

## 2. Clinical Director

a. The clinical director shall be a physician holding an unrestricted license to practice medicine in Louisiana and who has the following:

i. unrestricted Drug Enforcement Agency (DEA) and state controlled substance licenses;

ii. if the license(s) is from another jurisdiction, the license(s) must be documented in the employment record and must also be unrestricted;

iii. board-certification in general psychiatry; and

iv. satisfactory completion of a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director, which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If the training was completed in a psychiatric residency program not accredited by the ACGME, the physician must demonstrate that he/she meets the most current requirements as set forth in the American Board of Psychiatry and Neurology's Board Policies, Rules and Regulations regarding Information for Applicants for Initial Certification in Psychiatry.

b. The clinical director is responsible for the following:

i. providing a monthly minimum of one hour of on-site clinical direction per resident; and

ii. monitoring and evaluating the quality and appropriateness of services and treatment provided by the facility's direct care staff.

3. LMHPs, MHPs, and MHSs. The PRTF shall provide or make available adequate numbers of LMHPs, MHPs, and MHSs to care for its residents. There shall be at least one LMHP or MHP supervisor on duty at all times. The PRTF shall develop a policy to determine the number of LMHPs, MHPs, MHSs on duty and the ratio of LMHPs and MHPs to MHSs based on the needs of its residents.

a. A LMHP or a MHP shall be designated and assigned as treatment plan manager for each resident and given responsibility for and authority over those activities detailed in the minimum licensure requirements, including:

i. supervision of the treatment plan;

ii. integration of the various aspects of the resident's program;

iii. recording of the resident's progress as measured by objective indicators and making appropriate changes/modifications; and

iv. serving as liaison between the resident, provider, family, and community during the resident's admission to and residence in the facility, or while the resident is receiving services from the provider.

b. A LMHP or MHP shall provide a minimum of three individual therapy sessions each week for each resident (a minimum weekly total of 120 minutes).

c. A LMHP or MHP shall provide a minimum of two group therapy sessions per week for each resident.

d. A LMHP or MHP shall have a maximum caseload not to exceed 12 residents.

e. LMHPs, MHPs, and MHSs shall be responsible for:

i. evaluating residents;

ii. formulating written individualized plans of care;

iii. providing active treatment measures; and

iv. engaging in discharge planning.

f. The MHSs shall be under the supervision of LMHPs and/or MHPs to assist with the duties and requirements of the PRTF.

4. Psychologist. Psychological services shall be provided by, or supervised by, a psychologist with a doctorate degree from an accredited program in clinical or counseling psychology and with appropriate post-graduate experience. The PRTF shall provide or have available a psychologist to provide psychological testing and psychological services, as necessary to assist in essential diagnostic formulations as requested, and participate in program development and evaluation of program effectiveness, in therapeutic interventions and in treatment plan team meetings. Psychological services may be provided directly or by contract.

## 5. Registered Nurse

a. A registered nurse licensed to practice in Louisiana shall oversee and direct the nursing services of the PRTF. He/she shall be employed full time and be on-site 40 hours per week during normal business hours.

b. Nursing services shall be provided by or supervised by a registered nurse licensed to practice in Louisiana. There shall be an adequate number of registered nurses, licensed practical nurses, and other staff, to provide the nursing care necessary under each resident's treatment plan. When no RN is on site, there shall be an RN available to be on-site within 30 minutes as needed.

6. Physician. The PRTF shall have available a physician licensed in the state of Louisiana who shall assume 24-hour on-call medical responsibility for non-emergent physical needs of the facility's residents.

7. A licensed dietician, whether provided directly or by contract, shall be responsible for the dietary services program of the PRTF.

B. If the PRTF is providing both mental health and substance abuse treatment, the PRTF must also meet the staffing requirements for the resident's ASAM level required by the department, or the department's designee, in addition to the mental health PRTF requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**Subchapter I. Additional Requirements for Addictive Disorder PRTFs**

**§9095. General Provisions**

A. An addictive disorder PRTF is a PRTF that provides inpatient psychiatric services to its residents who are admitted primarily for treatment for substance abuse or addictive disorders, not including mental illness. In addition to the provisions applicable to all PRTFs, an addictive disorder PRTF shall comply with the provisions of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§9097. Personnel Qualifications, Responsibilities, and Requirements for Addictive Disorder PRTFs**

A. An addictive disorder PRTF shall have the following minimum personnel.

1. Administrator. The administrator must have a bachelor's degree from an accredited college or university in a mental health-related field, plus at least five years of related experience. The administrator is responsible for the on-site, daily implementation and supervision of the overall facility's operation commensurate with the authority conferred by the governing body.

a. Grandfathering Provision. For a facility with a current substance abuse license from DHH at the time of the promulgation of this final Rule, the current administrator may remain the administrator of the facility provided the following conditions are met.

i. The administrator has been the administrator on a full time basis for the facility for at least five years.

ii. The administrator was approved by the governing body to hold the position of administrator of the PRTF.

iii. An administrator under this grandfathering provision may not transfer as an administrator to another PRTF.

2. Clinical Director

a. The clinical director shall be a physician holding an unrestricted license to practice medicine in Louisiana and who has the following:

i. unrestricted DEA and state controlled substance licenses;

ii. if the license(s) is from another jurisdiction, the license(s) must be documented in the employment record and must also be unrestricted; and

iii. one of the following:

(a). board certification in general psychiatry and is eligible for certification in the subspecialty of addiction psychiatry by the American Board of Psychiatry and Neurology (ABPN);

(b). board eligible in general psychiatry with ABPN and has current certification in addiction psychiatry by the American Society of Addiction Medicine (ASAM); or

(c). an ABMS board-certified physician (non-psychiatrist) with ASAM certification and consultation with an ABPN board-certified psychiatrist. Proof of consultation shall be a current contract with a board-certified psychiatrist and written documentation of consults in the client's medical record.

b. The clinical director is responsible for the following:

i. providing a monthly minimum of one hour of on-site clinical direction per resident; and

ii. monitoring and evaluating the quality and appropriateness of services and treatment provided by the facility's direct care staff.

3. LMHPs, MHPs and MHSs. The PRTF shall provide or make available adequate numbers of LMHPs, MHPs and MHSs to care for its residents. There shall be at least one LMHP or MHP supervisor on duty at all times. The PRTF shall develop a policy to determine the number of LMHPs, MHPs, MHSs on duty and the ratio of LMHPs and MHPs to MHSs based on the needs of its residents.

a. A LMHP or a MHP shall be designated and assigned as treatment plan manager for each resident and given responsibility for and authority over those activities detailed in the minimum licensure requirements, including:

i. supervision of the treatment plan;

ii. integration of the various aspects of the resident's program;

iii. recording of the resident's progress as measured by objective indicators and making appropriate changes/modifications; and

iv. serving as liaison between the resident, provider, family, and community during the resident's admission to and residence in the facility, or while the resident is receiving services from the provider.

b. A LMHP or MHP shall provide a minimum of three individual therapy sessions each week for each resident (a minimum weekly total of 120 minutes) and a minimum of two group therapy sessions per week for each resident; for detoxification programs, there shall be at least 25 hours of structured treatment activities per week including counseling and educational activities.

c. LMHPs, MHPs, and MHSs shall be responsible for:

i. evaluating residents;

ii. formulating written individualized plans of care;

iii. providing active treatment measures; and

iv. engaging in discharge planning.

d. The MHSs shall be under the supervision of LMHPs and/or MHPs to assist with the duties and requirements of a PRTF.

4. Psychologist. Psychological services shall be provided by or supervised by a psychologist with a doctorate degree from an accredited program in clinical or counseling psychology and with appropriate post-graduate experience. The PRTF shall provide or have available a psychologist to provide psychological testing and psychological services, as necessary to assist in essential diagnostic formulations as requested, and participate in program development and evaluation of program effectiveness, in therapeutic interventions and in treatment plan team meetings. Psychological services may be provided directly or by contract. PRTFs that provide only a detoxification program are not required to provide a psychologist.

5. Registered Nurse

a. A registered nurse licensed to practice in Louisiana shall oversee and direct the nursing services of the

PRTF. He/she shall be employed full time and be on-site 40 hours per week during normal business hours.

b. Nursing services shall be provided by or supervised by a registered nurse licensed to practice in Louisiana. There shall be an adequate number of registered nurses, licensed practical nurses, and other staff, to provide the nursing care necessary under each resident's treatment plan. When no RN is on site, there shall be an RN available to be on-site within 30 minutes as needed.

6. Physician. The PRTF, except one that provides a social detoxification program only, shall have available a physician licensed in the state of Louisiana who shall assume 24-hour on-call medical responsibility for non-emergent physical needs of the facility's residents; the PRTF may have a licensed nurse practitioner or physician's assistant in place of the physician provided he/she works under a licensed physician.

7. A licensed dietician, whether provided directly or by contract, shall be responsible for the dietary services program of the PRTF.

B. The PRTF shall abide by the staffing requirements for the ASAM level of the admitted resident required by the department or the department's designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **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. This proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. It is anticipated that this proposed Rule will promote the health and welfare of eligible recipients by ensuring their continued access to appropriate therapeutic residential intervention services.

#### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

#### **RULE TITLE: Psychiatric Residential Treatment Facilities Minimum Licensing Standards**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than

the cost of promulgation for FY 11-12. It is anticipated that \$19,106 (SGF) will be expended in FY 11-12 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 increase revenue collections to the Department by approximately \$4,200 for FY 11-12, \$4,200 for FY 12-13, and \$4,200 for FY 13-14 as a result of the collection of annual fees from the licensing of inpatient psychiatric residential treatment facilities (PRTFs).

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

This rule proposes to amend the provisions governing the minimum licensing standards for inpatient psychiatric residential treatment facilities in order to prepare for the transition to a comprehensive system of delivery for behavioral health services in the state (anticipate approximately 7 facilities). It is anticipated that implementation of this proposed rule will have economic costs to inpatient psychiatric residential treatment facilities of approximately \$600 annually, and will benefit all PRTF facilities by providing up-to-date licensing requirements for operation in the state of Louisiana.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1111#064

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

### **NOTICE OF INTENT**

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

School Based Behavioral Health Services  
(LAC 50:XXXIII.Chapters 41-47)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 41-47 in 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the

Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized services for a select group of high risk children and adolescents. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide school based behavioral health services to children and youth.

#### **Title 50**

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

#### **Part XXXIII. Behavioral Health Services**

#### **Subpart 5. School Based Behavioral Health Services**

#### **Chapter 41. General Provisions**

##### **§4101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for school based behavioral health services rendered to children and youth with behavioral health disorders. These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health, in collaboration with a statewide management organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The school based behavioral health services rendered to children with emotional or behavioral disorders are medically necessary behavioral health services provided to Medicaid recipients in accordance with an Individualized Education Program (IEP).

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 38:

##### **§4103. Recipient Qualifications**

A. Individuals at least 3 years of age and under the age of 21, who meet Medicaid eligibility and clinical criteria, shall qualify to receive behavioral health services in a school setting.

B. Qualifying children and adolescents must have been determined eligible for Medicaid and behavioral health services covered under Part B of the Individuals with Disabilities Education Act (IDEA), with a written service plan (an IEP) which contains medically necessary services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his or practice under state law.

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 38:

#### **Chapter 43. Services**

##### **§4301. General Provisions**

A. The Medicaid Program shall provide coverage for behavioral health services pursuant to §1905(a) of the Social Security Act which are addressed in the IEP, medically necessary, and that correct or ameliorate a child's health condition.

B. Services must be performed by qualified providers who provide school based behavioral health services as part of their respective area of practice (e.g. psychologist providing a behavioral health evaluation). Services rendered by certified school psychologists must be supervised consistent with R.S. 17:7.1.

C. Services shall be provided in accordance with the established service limitations.

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 38:

##### **§4303. Covered Services**

A. School based behavioral health services shall include Medicaid covered services, including treatment and other services to correct or ameliorate an identified mental health or substance abuse diagnosis. Services are provided by or through a local education agency (LEA) to children with, or suspected of having, a disability and who attend public school in Louisiana.

B. The following school based behavioral health services shall be reimbursed under the Medicaid Program:

1. therapeutic services, including diagnosis and treatment; and

2. rehabilitation services, including community psychiatric support and treatment (CPST) and psychosocial rehabilitation.

C. Service Limitations. Psychosocial rehabilitation is limited to 750 hours of group services per calendar year. Hours in excess of 750 may be authorized when deemed medically necessary.

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 38:

##### **§4305. Service Limitations and Exclusions**

A. The Medicaid Program shall not cover school based behavioral health services performed solely for educational purposes (e.g. academic testing). Services that are not reflected in the IEP (as determined by the assessment and evaluation) shall not be covered.

B. Social needs, educational needs, or habilitative services are not covered school based behavioral health 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, Bureau of Health Services Financing, LR 38:

#### **Chapter 45. Provider Participation**

##### **§4501. Local Education Agency Responsibilities**

A. The LEA shall ensure that its licensed and unlicensed behavioral health practitioners are employed according to the requirements specified under IDEA.

B. An LEA shall ensure that individual practitioners are in compliance with Medicaid qualifications, Department of Education Bulletin 746, and Louisiana Standards for State Certification of School Personnel prior to billing the Medicaid Program for any school based behavioral health services rendered by clinicians.

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 38:

## Chapter 47. Payments

### §4701. Payment Methodology

A. Payments for school based behavioral health services shall be made to the LEA.

B. The interim payment to the LEA for behavioral health services is based upon the established Medicaid fee schedule for behavioral health services.

C. Final payment to each LEA shall be the lesser of:

1. the number of units billed multiplied by \$100;

a. this amount may be periodically adjusted at the department's discretion; or

2. the most recent school year's actual cost as determined by desk review and/or audit for each local education agency (LEA) 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, Bureau of Health Services Financing, LR 38:

### §4703. Cost Calculations

A. Each LEA shall determine its own costs and certify to those costs annually by using the appropriate form(s), report(s) and/or template(s) designated by the department. LEAs shall report costs in accordance with federal and state laws and regulations, the provisions of this Rule, and other manuals, notices, or directives issued by the department.

B. For each of the IDEA related school based services other than specialized transportation services, the participating LEAs' actual cost of providing the services will be claimed for Medicaid reimbursement.

C. The State will gather actual expenditure information for each LEA through its payroll/benefits and accounts payable system. These costs are also reflected in the annual financial report (AFR) that all LEAs are required to certify and submit to the Department of Education.

D. The department may at its discretion request and utilize other LEA specific data and information to determine actual costs for providing 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, Bureau of Health Services Financing, LR 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

#### 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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: School Based Behavioral Health Services

#### 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 state general fund programmatic costs of \$2,626,323 for FY 11-12, \$8,074,896 for FY 12-13 and \$8,397,892 for FY 13-14. It is anticipated that \$1,066 (\$533 SGF and \$533 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$5,938,964 for FY 11-12, \$18,645,474 for FY 12-13 and \$19,391,293 for FY 13-14. It is anticipated that \$533 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide school based behavioral health services to children and youth. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$8,564,221 for FY 11-12, \$26,720,370 for FY 12-13 and \$27,789,185 for FY 13-14.

#### 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 and employment.

Don Gregory  
Medicaid Director  
1111#065

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office



## NOTICE OF INTENT

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

Substance Abuse Services  
(LAC 50:XXXIII.Chapters 141-147)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 141-147 in 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized services for a select group of high risk children and adolescents. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a coordinated behavioral health services system under the Medicaid Program which will now provide coverage of substance abuse services for children and adults.

#### Title 50

### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXXIII. Behavioral Health Services

#### Subpart 15. Substance Abuse Services

#### Chapter 141. General Provisions

#### §14101. Introduction

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for substance abuse services rendered to children and adults. These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health, in collaboration with a statewide management organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The substance abuse services rendered shall be those services which are medically necessary to reduce the

disability resulting from the illness and to restore the individual to his/her best possible functioning level in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### §14103. Recipient Qualifications

A. Children and adults who meet Medicaid eligibility and clinical criteria shall qualify to receive medically necessary substance abuse services.

B. Qualifying children and adults with an identified substance abuse diagnosis shall be eligible to receive substance abuse services covered under the Medicaid State Plan.

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 38:

#### Chapter 143. Services

#### §14301. General Provisions

A. All addiction services must be medically necessary. The medical necessity for services shall be determined by a licensed mental health practitioner (LMHP) or physician who is acting within the scope of his/her professional license and applicable state law.

B. Substance abuse services are subject to prior approval by the SMO.

C. American Society of Addiction Medicine (ASAM) levels of care require prior approval and reviews on an ongoing basis, as deemed necessary by the department to document compliance with national standards.

D. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody. Coordination with other child-serving systems should occur as needed to achieve the treatment goals. All coordination must be documented in the child's medical record.

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must request and approve the provision of services to the recipient.

E. Children who are in need of substance abuse services shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

1. age;
2. development;
3. education; and
4. culture.

F. Evidence-based practices require prior approval and fidelity reviews on an ongoing basis as determined necessary 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 38:

#### §14303. Covered Services

A. The following substance abuse services shall be reimbursed under the Medicaid Program:

1. assessment;
2. outpatient treatment; and
3. residential treatment.

B. Service Exclusions. The following services/components shall be excluded from Medicaid reimbursement:

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual;
2. services provided at a work site which are job tasks oriented and not directly related to the treatment of the recipient's needs;
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving substance abuse services;
4. services rendered in an institute for mental disease; and
5. room and board for any rates provided in a residential setting.

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 38:

#### **Chapter 145. Provider Participation**

##### **§14501. Provider Responsibilities**

A. Each provider of substance abuse services shall enter into a contract with the statewide management organization in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department.

C. Providers of substance abuse services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing substance abuse services must be certified by the department in addition to operating within their scope of practice license. To be certified or recertified, providers shall meet the provisions of this Rule, the provider manual and the appropriate statutes. The provider shall create and maintain documents to substantiate that all requirements are met.

E. Substance abuse providers shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to the SMO in writing within the time limit established by the department.

F. Providers shall maintain case records that include, at a minimum:

1. a copy of the treatment plan;
2. the name of the individual;
3. the dates of service;
4. the nature, content, and units of services provided;
5. the progress made toward functional improvement; and
6. the goals of the treatment plan.

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 38:

#### **Chapter 147. Reimbursement**

##### **§14701. Reimbursement Methodology**

A. Reimbursement for services shall be based upon the established Medicaid fee schedule for substance abuse 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, Bureau of Health Services Financing, LR 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health and substance abuse services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

##### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

##### **RULE TITLE: Substance Abuse Services**

##### **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 state general fund programmatic costs of \$2,736,158 for FY 11-12, \$8,094,613 for FY 12-13 and \$8,099,968 for FY 13-14. It is anticipated that \$820 (\$410 SGF and \$410 FED) will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately

\$6,187,520 for FY 11-12, \$18,691,001 for FY 12-13 and \$18,703,367 for FY 13-14. It is anticipated that \$410 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide substance abuse services to adults and children with an identified substance abuse diagnosis (approximately 267,693 adults and 3,976 children). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$8,922,858 for FY 11-12, \$26,785,614 for FY 12-13 and \$26,803,335 for FY 13-14.

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 and employment.

Don Gregory  
Medicaid Director  
1111#066

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Therapeutic Group Homes  
(LAC 50:XXXIII.Chapters 121-127)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:XXXIII.Chapters 121-127 in 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, Bureau of Health Services Financing currently provides coverage and reimbursement for behavioral health services rendered to Medicaid recipients through an array of service programs. Inpatient psychiatric services are furnished in free-standing psychiatric hospitals to recipients who are under the age of 21, or over the age of 65, and in distinct-part psychiatric units of acute care hospitals to recipients of any age. Outpatient mental health services are furnished through the Mental Health Rehabilitation, Mental Health Clinic, Multi-Systemic Therapy and Professional Services Programs. Substance abuse services are currently not covered under the Medicaid Program except for services rendered to recipients under the age of 21.

In an effort to enhance service quality, facilitate access to care, and effectively manage costs, the department proposes to restructure the current service delivery system through the Louisiana Behavioral Health Partnership which will provide a mechanism for developing and implementing a comprehensive system for behavioral health services inclusive of a coordinated system of care with specialized

services for a select group of high risk children and adolescents. This comprehensive service delivery model is being developed in conjunction with the Department of Children and Family Services, the Department of Education, and the Office of Juvenile Justice.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt provisions to implement a coordinated behavioral health services system under the Medicaid Program to provide behavioral health services to children with emotional/behavioral disorders in therapeutic group homes.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXXIII. Behavioral Health Services**

**Subpart 13. Therapeutic Group Homes**

**Chapter 121. General Provisions**

**§12101. Introduction**

A. The Medicaid Program hereby adopts provisions to provide coverage under the Medicaid State Plan for behavioral health services rendered to children and youth in a therapeutic group home (TGH). These services shall be administered under the authority of the Department of Health and Hospitals, Office of Behavioral Health in collaboration with a statewide management organization (SMO) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. The behavioral health services rendered shall be those services medically necessary to reduce the disability resulting from the illness and to restore the individual to his/her best possible functioning level in the community.

C. A therapeutic group home provides a community-based residential service in a home-like setting of no greater than eight beds under the supervision and program oversight of a psychiatrist or psychologist.

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 38:

**§12103. Recipient Qualifications**

A. Individuals under the age of 21, who meet Medicaid eligibility and clinical criteria, shall qualify to receive therapeutic group home services.

B. Qualifying children and adolescents with an identified mental health or substance abuse diagnosis shall be eligible to receive behavioral health services rendered by a TGH.

C. In order for a child to receive TGH services:

1. the department, or its designee, must have determined that less intensive levels of treatment are unsafe, unsuccessful, or unavailable;

2. the child must require active treatment that would not be able to be provided at a less restrictive level of care on a 24-hour basis with direct supervision/oversight by professional behavioral health staff; and

3. the child must attend a school in the community.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**Chapter 123. Services**

**§12301. General Provisions**

A. All behavioral health services must be medically necessary. The medical necessity for services shall be

determined by a licensed mental health practitioner or physician who is acting within the scope of his/her professional license and applicable state law.

B. All services shall be prior authorized. Services which exceed the initial authorization must be approved for re-authorization prior to service delivery.

C. Services provided to children and youth must include communication and coordination with the family and/or legal guardian and custodial agency for children in state custody. Coordination with other child-serving systems should occur as needed to achieve the treatment goals. All coordination must be documented in the child's medical record.

1. The agency or individual who has the decision making authority for a child or adolescent in state custody must request and approve the provision of services to the recipient.

D. Children who are in need of behavioral health services shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

1. age;
2. development;
3. education; and
4. culture.

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 38:

### **§12303. Covered Services**

A. The Medicaid Program may reimburse a therapeutic group home for the following services:

1. screening and assessment services;
2. therapy services (individual, group, and family whenever possible);
3. on-going psychiatric assessment and intervention as needed; and
4. skill-building services.

B. Service Exclusions. The following services/components shall be excluded from Medicaid reimbursement:

1. components that are not provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual;
2. services provided at a work site which are job tasks oriented and not directly related to the treatment of the recipient's needs;
3. any services or components in which the basic nature of which are to supplant housekeeping, homemaking, or basic services for the convenience of an individual receiving substance abuse services;
4. services rendered in an institution for mental disease; and
5. room and board; and
6. supervision associated with the child's stay in the TGH.

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 38:

## **Chapter 125. Provider Participation**

### **§12501. Provider Responsibilities**

A. Each provider of TGH services shall enter into a contract with the Statewide Management Organization in order to receive reimbursement for Medicaid covered services.

B. All services shall be delivered in accordance with federal and state laws and regulations, licensing regulations, the provisions of this Rule, the provider manual, and other notices or directives issued by the department.

C. Providers of TGH services shall ensure that all services are authorized and any services that exceed established limitations beyond the initial authorization are approved for re-authorization prior to service delivery.

D. Anyone providing TGH services must be certified by the department in addition to operating within their scope of practice license.

E. TGH facilities shall be accredited by an approved accrediting body and maintain such accreditation. Denial, loss of or any negative change in accreditation status must be reported to the SMO in writing within the time limit established by the department.

F. Providers of TGH services shall be required to perform screening and assessment services upon admission and within the timeframe established by the department thereafter to track progress and revise the treatment plan to address any lack of progress and to monitor for current medical problems and concomitant substance abuse issues.

G. Annually, TGH facilities shall submit documentation demonstrating compliance with fidelity monitoring for at least two evidence-based practices (EBP) and/or one level of American Society of Addiction Medicine (ASAM) criteria. The Office of Behavioral Health (OBH) shall approve the auditing body providing the EBP/ASAM fidelity monitoring.

H. For TGH facilities that provide care for sexually deviant behaviors, substance abuse, or dually diagnosed individuals, the facility shall submit documentation regarding the appropriateness of the research-based, trauma-informed programming and training, as well as compliance with ASAM level of care being provided.

I. A TGH must incorporate at least two research-based approaches pertinent to the sub-populations of TGH clients to be served by the specific program. The specific research-based models to be used should be incorporated into the program description. The research-based models must be approved by OBH.

J. A TGH must provide the minimum amount of active treatment hours established by the department, and performed by qualified staff per week for each child, consistent with each child's treatment plan and meeting assessed needs.

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 38:

### **Chapter 127. Reimbursement**

#### **§12701. Reimbursement Methodology**

A. Reimbursement for covered TGH services shall be based upon an interim Medicaid per diem payment.

1. The interim Medicaid per diem payment shall be inclusive of, but not limited to:

- a. allowable cost of clinical and related services;
- b. psychiatric support services;
- c. allowable cost of integration with community resources; and
- d. skill-building services provided by unlicensed practitioners.

2. Allowable and non-allowable costs components, as defined by the department, shall be outlined in the TGH provider manual and other departmental guides.

B. All in-state Medicaid participating TGH providers are required to file an annual Medicaid cost report according to the department's specifications and departmental guides and manuals. The cost report period shall correspond to a calendar year basis of January 1 through December 31.

C. Services provided by psychologists and licensed mental health practitioners shall be billed separately and reimbursed according to the established Medicaid fee schedule for the services rendered.

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 38:

### **§12703. In-State Privately Owned and Operated Therapeutic Group Homes**

A. In-state privately owned and operated therapeutic group homes shall be reimbursed for covered TGH services through a modeled interim Medicaid per diem reimbursement rate using estimated allowable cost for the TGH covered services and staffing requirements.

B. Retroactive Adjustments to the Interim Rates. Interim payments to in-state privately owned and operated TGH facilities shall be subject to retroactive rate adjustments according to the following criteria.

1. The facility's allowable per diem cost will be determined from the Medicaid cost report submitted. The provider will receive a retroactive rate adjustment equal to 50 percent of the difference between the actual Medicaid allowable per diem cost and the interim Medicaid per diem reimbursement rate for each covered TGH patient day.

2. The payment adjustment will not recognize provider allowable cost beyond the threshold of 125 percent of the initial Medicaid per diem reimbursement rate paid during each fiscal year.

3. Providers who have disclaimed cost reports or are non-filers will be subject to the modification of the payment adjustment as deemed appropriate 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 38:

### **§12705. In-State Publicly Owned and Operated Therapeutic Group Homes**

A. In-state publicly owned and operated therapeutic group homes shall be reimbursed for all reasonable and necessary cost of operation. These facilities shall receive the interim Medicaid per diem payment established for the in-state privately owned and operated TGH facilities according to the provisions of §12703.A.

B. The interim payment to in-state publicly owned and operated TGH facilities will be subject to retroactive cost settlement in accordance with Medicare allowable cost

principles outlined in the Centers for Medicare and Medicaid Service's Provider Reimbursement Manual Publication 15-1.

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, Bureau of Health Services Financing, LR 38:

### **§12707. Out-of-State Therapeutic Group Homes**

A. Out-of-state therapeutic group homes shall be reimbursed the lesser of their specific in-state TGH Medicaid per diem reimbursement rate, or 95 percent of the Louisiana interim Medicaid per diem reimbursement rate calculated according to the provisions of §12703.A.

B. Payments to out-of-state TGH facilities that provide covered services shall not be subject to retroactive cost adjustments or TGH cost reporting requirements.

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 38:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by improving access to behavioral health services, care coordination, and enhancing the quality of care Medicaid recipients will receive.

### **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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Therapeutic Group Homes**

### **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 state general fund programmatic costs of \$1,976,984 for FY 11-12, \$5,844,019 for FY 12-13 and \$6,019,339 for FY 13-14. It is anticipated that \$1,230 (\$615 SGF and \$615 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above

**Title 48**

**PUBLIC HEALTH-GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing**

**Chapter 62. Therapeutic Group Homes**

**Subchapter A. General Provisions**

**§6201. Introduction**

A. The purpose of this Chapter is to provide for the development, establishment and enforcement of statewide licensing standards for the care of clients in therapeutic group homes (TGHs), to ensure the maintenance of these standards, and to regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of TGHs.

B. TGHs provide a 24 hours per day, seven days per week, structured and supportive living environment. The purpose of a therapeutic group home (TGH) is to provide community-based services in a homelike environment to clients under the age of 21 who are determined to need psychiatric or psychological services.

C. Each TGH shall deliver an array of clinical treatment and related services, including psychiatric supports, integration with community resources, and skill building taught within the context of a safe home-like setting under the supervision of a professional staff person.

D. The goal of a therapeutic group home is to maintain the client's connections to their community, yet receive and participate in a more intensive level of treatment in which the client lives safely in a 24-hour setting.

E. The care and services rendered by a TGH shall include, but not be limited to:

1. behavioral health services;
2. medication management;
3. assistance with independent living skills;
4. recreational services;
5. rehabilitative services; and
6. transportation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§6203. Definitions**

*Active Treatment*—implementation of a professionally developed and supervised comprehensive treatment plan that is developed no later than seven days after admission and designed to achieve the client's discharge from inpatient status at the earliest possible time. To be considered active treatment, the services must contribute to the achievement of the goals listed in the comprehensive treatment plan. Recreation, tutoring, attending school, vocational services and transportation are not considered active treatment.

*Comprehensive Treatment Plan*—the comprehensive plan of care which is developed by the TGH for each client receiving services that includes all of the services each client needs, including medical/psychiatric, nursing, psychological and psychosocial therapies.

*Core Mental Health Discipline*—academic training programs in psychiatry, psychology, social work and psychiatric nursing.

are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$4,470,329 for FY 11-12, \$13,494,229 for FY 12-13 and \$13,899,056 for FY 13-14. It is anticipated that \$615 will be expended in FY 11-12 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 69.34 percent in FY 11-12. The enhanced rate of 69.78 percent for the last nine months of FY 12 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed rule proposes to implement a coordinated behavioral health services system under the Louisiana Medicaid Program to provide behavioral health services to children with emotional/behavioral disorders in therapeutic group homes (approximately 275 beds statewide). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$6,446,083 for FY 11-12, \$19,338,248 for FY 12-13 and \$19,918,395 for FY 13-14.

**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 and employment.

Don Gregory  
Medicaid Director  
1111#067

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Therapeutic Group Homes  
Minimum Licensing Standards  
(LAC 48:I.Chapter 62)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 48:I.Chapter 62 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Pursuant to R.S. 40:2009, the Department of Health and Hospitals has the sole authority for the licensing of any facility participating in the Medicaid Residential Treatment Option, inclusive of facilities which provide health care services to children in a residential setting. In compliance with the directives of R.S. 40:2009, the department proposes to adopt provisions governing the minimum licensing standards for therapeutic group homes in order to prepare for the transition to a comprehensive system of delivery for behavioral health services in the state. Therapeutic group homes will provide behavioral health services to children in a residential or home-like setting.

*Department*—the Louisiana Department of Health and Hospitals, or “DHH.”

*DCFS*—the Louisiana Department of Child and Family Services.

*Direct Care Staff*—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as direct care staff.

*Division of Administrative Law*—the Louisiana Department of State Civil Service, Division of Administrative Law or “DAL.”

*Health Standards Section*—the Louisiana Department of Health and Hospitals, Health Standards Section or “HSS.”

*Human Services Field/Mental Health-Related Field*—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

*Licensed Mental Health Professional (LMHP)*—an individual who meets one of the following education and experience requirements:

1. a physician duly licensed to practice medicine in the state of Louisiana and has completed an accredited training program in psychiatry;

2. a psychologist licensed as a practicing psychologist under the provisions of R.S. 28:2351-2370;

3. a medical psychologist licensed to practice under the provisions of R.S. 37:1360.51 et seq.;

4. a social worker who holds a master's degree in social work from an accredited school of social work and is a licensed clinical social worker under the provisions of R.S. 37:2701-2718, as amended;

5. an advanced practice registered nurse licensed as a registered nurse in the state of Louisiana by the Board of Nursing who may practice to the extent that services are within the nurse's scope of practice:

a. is a nurse practitioner specialist in adult psychiatric and mental health and family psychiatric and mental health; or

b. is a certified nurse specialist in psychosocial, gerontological psychiatric mental health, adult psychiatric and mental health and child-adolescent mental health;

6. a licensed professional counselor who is licensed as such under the provision of R.S. 37:1101-1115;

7. a licensed marriage and family therapist who is licensed as such under the provisions of R.S. 37:1116-1121; or

8. a licensed addiction counselor who is licensed as such under the provisions of R.S. 37:3387.

*Licensee*—the person, partnership, company, corporation, association, organization, professional entity, or other entity to whom a license is granted by the licensing agency and upon whom rests the ultimate responsibility and authority for the conduct of and services provided by the TGH.

*LSUCCC*—the Department of Public Safety and Corrections, Louisiana State Uniform Construction Code Council.

*Mental Health Professional (MHP)*—an individual who is supervised by a LMHP and meets the following criteria as documented by the provider:

1. the individual has a Master of Social Work degree; or

2. the individual has a Master of Arts degree, Master of Science degree or a Master of Education degree in a mental health-related field and has a minimum of 15 hours of graduate level course work and/or practicum in applied intervention strategies/methods designed to address behavioral, emotional and/or mental problems. These hours may have been obtained as a part of, or in addition to, the Master's degree.

*OSFM*—the Department of Public Safety and Corrections, Office of State Fire Marshal.

*Passive Physical Restraint*—the least amount of direct physical contact required on the part of a staff member to prevent a client from harming himself/herself or others.

*Pretreatment Assessment (PTA)*—the documented examination of a client which provides clinical information to support the medical necessity of the referral to the therapeutic group home and establishes that TGH services are the most appropriate services to meet the client's needs.

*Secretary*—the secretary of the Louisiana Department of Health and Hospitals, or his designee.

*Supervising Practitioner*—the qualified psychiatrist or psychologist who supervises and oversees the therapeutic group home's services and programs.

*Therapeutic Group Home (TGH)*—a facility that provides community-based residential services to clients under the age of 21 in a home-like setting of no greater than eight beds under the supervision and oversight of a psychiatrist or psychologist.

*Time Out*—the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

*Validated Complaint*—a complaint received by DHH Health Standards Section and found to be substantiated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Subchapter B. Licensing**

### **§6207. General Provisions**

A. All TGH providers shall be licensed by the Department of Health and Hospitals. The department is the only licensing authority for TGH providers in Louisiana. It shall be unlawful to operate as a therapeutic group home without possessing a current, valid license issued by the department. Each TGH shall be separately licensed.

B. A TGH license shall:

1. be issued only to the person or entity named in the license application;

2. be valid only for the TGH to which it is issued and only for the specific geographic address of that facility;

3. enable the provider to operate as a TGH within a specific DHH region;

4. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;

5. expire on the expiration date listed on the license, unless timely renewed by the TGH;

6. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and

7. be posted in a conspicuous place on the licensed premises at all times.

C. In order for the TGH to be considered operational and retain licensed status, the provider shall meet the following conditions.

1. There shall be adequate direct care staff and professional services staff employed and available to provide services to clients at the TGH at all times.

2. There shall always be at least two employees on duty at the facility at all times.

D. The licensed TGH shall abide by and adhere to any state and federal law, rules, policy, procedure, manual or memorandum pertaining to such facilities.

E. A separately licensed TGH shall not use a name which is substantially the same as the name of another TGH licensed by the department or by DCFS. A TGH provider shall not use a name which is likely to mislead the client or family into believing it is owned, endorsed or operated by the state of Louisiana.

G. No branches, satellite locations or offsite campuses shall be authorized for a TGH.

H. No new TGH shall accept clients until the TGH has written approval and/or a license issued by HSS. If the facility is currently maintaining a license as a child residential facility from DCFS, the facility may remain operational under its DCFS license during the TGH application process.

I. Plan Review. Construction documents (plans and specifications) are required to be submitted and approved by both the OSFM and the Department of Health and Hospitals as part of the licensing procedure and prior to obtaining a license.

1. Applicable Projects. Construction documents require approval for the following types of projects:

- a. new construction;
- b. any entity that intends to operate and be licensed as a TGH in a physical environment that is not currently licensed by DCFS as a child residential facility; and
- c. major alterations.

2. Submission Plans

a. Submittal Requirements

i. One set of the final construction documents shall be submitted to the OSFM for approval. The fire marshal's approval letter and final inspection shall be sent to the DHH.

ii. One set of the final construction documents shall be submitted to DHH, or its designated plan review entity, along with the appropriate review fee and a "plan review application form" for approval.

b. Design Criteria. The project shall be designed in accordance with the following criteria:

i. the latest OSFM adopted edition of the National Fire Protection Agency (NFPA) 101-Life Safety Code;

ii. the latest LSUCCC adopted edition of the *International Building Code*;

iii. the latest edition of the Americans with Disabilities Act (ADA) Standards;

iv. the current DHH licensing standards for therapeutic group home facilities;

v. the latest OPH adopted edition of the *Louisiana State Plumbing Code*;

vi. the latest edition of the State Sanitary Code regulations applicable to residential facilities/group homes;

c. Construction Document Preparation.

Construction documents submitted to DHH, or its designated plan review entity, shall be prepared only by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed. These documents shall be of an architectural or engineering nature and thoroughly illustrate the project that is accurately drawn, dimensioned, and contain noted plans, details, schedules and specifications. At a minimum the following shall be submitted:

i. site plans;

ii. floor plans. These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;

iii. building elevations;

iv. room finish, door and window schedules;

v. details pertaining to the ADA Standards; and

vi. specifications for materials.

3. Waivers. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the State Sanitary Code. The facility must submit a waiver request in writing to HSS. The facility must demonstrate how patient safety and quality of care offered is not compromised by the waiver, and must demonstrate the undue hardship imposed on the facility if the waiver is not granted. The facility must demonstrate its ability to completely fulfill all other requirements of service. The department will make a written determination of the requests.

a. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6209. Initial Licensing Application Process**

A. An initial application for licensing as a TGH shall be obtained from the department. A completed initial license application packet for a TGH shall be submitted to and approved by the department prior to an applicant providing TGH services.

B. Currently licensed DCFS providers that are converting to TGHs must comply with all of the initial licensure requirements, except plan review, and may be eligible for the exception to the bedroom space requirement of this Chapter.

C. An applicant must submit a completed initial licensing application packet to the department, which shall include:

1. a completed TGH licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural facility plans for the TGH from the department and from the OSFM, and any other office/entity designated by the department to review and approve the facility's architectural plans, if the facility must go through plan review;



3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal;

4. a copy of the health inspection report with approval of occupancy from the Office of Public Health (OPH);

5. a copy of statewide criminal background checks, including sex offender registry status, on all individual owners with a 5 percent or more ownership interest in the TGH, and on all managing employees;

6. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

7. an organizational chart, including the names and position titles of key administrative personnel and the governing body; and

8. a floor sketch or drawing of the premises to be licensed;

9. a letter of intent as to the types of services or specialization that will be provided by the TGH (i.e. sexually offending behaviors, etc.); and

10. any other documentation or information required by the department for licensure.

D. Any person convicted of one of the following felonies is prohibited from being the health care provider, owner, supervising practitioner or clinical director or any managing employee of a TGH. For purposes of these provisions, the licensing application shall be rejected by the department for any felony conviction, guilty plea or nolo contendere plea relating to:

1. the violence, abuse, or negligence of a person;

2. the misappropriation of property belonging to another person;

3. cruelty, exploitation or the sexual battery of a juvenile or the infirmed;

4. a drug offense;

5. crimes of a sexual nature;

6. a firearm or deadly weapon;

7. Medicare or Medicaid fraud; or

8. fraud or misappropriation of federal or state funds.

E. If the initial licensing packet is incomplete when submitted, the applicant will be notified of the missing information and will have 90 days from receipt of the notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming a PRTF must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

F. Once the initial licensing application packet has been approved by the department, notification of the approval shall be forwarded to the applicant. Within 90 days of receipt of the approval notification, the applicant must notify the department that the TGH is ready and is requesting an initial licensing survey. If an applicant fails to notify the department within 90 days, the initial licensing application shall be closed. After an initial licensing application has

been closed, an applicant who is still interested in becoming a TGH must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the TGH provider will be issued an initial license to operate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6211. Types of Licenses**

A. The department shall have the authority to issue the following types of licenses.

1. Full Initial License. The department shall issue a full license to the TGH provider when the initial licensing survey finds that the provider is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees. The license for a TGH shall be valid until the expiration date shown on the license, unless the license is revoked, suspended, or modified prior to that time.

2. Provisional Initial License. The department may issue a provisional initial license to the TGH provider when the initial licensing survey finds that the provider is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients. The provisional license shall be valid for a period not to exceed six months.

a. At the discretion of the department, the provisional initial license may be extended for an additional period not to exceed 90 days in order for the TGH to correct the noncompliance or deficiencies.

b. The TGH provider shall submit a plan of correction to the department for approval and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional initial license.

c. A follow-up survey shall be conducted prior to the expiration of the provisional initial license.

i. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, a full license will be issued.

ii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the provisional initial license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed TGH provider who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional Renewal License. The department, in its sole discretion, may issue a provisional license to an existing licensed TGH for a period not to exceed six months.

a. At the discretion of the department, the provisional renewal license may be extended for an

additional period not to exceed 90 days in order for the TGH to correct the noncompliance or deficiencies.

b. A provisional renewal license may be issued for the following reasons:

i. the existing TGH has more than five deficient practices or deficiencies cited during any one survey;

ii. the existing licensed TGH has more than three validated complaints in a one year period;

iii. the existing TGH provider has been issued a deficiency that involved placing a client at risk for serious harm or death;

iv. the existing TGH provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey; or

v. the existing TGH provider is not in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

c. When the department issues a provisional renewal license to an existing licensed TGH provider, the provider shall submit a plan of correction to the department for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct an on-site follow-up survey at the TGH prior to the expiration of the provisional license.

i. If the on-site follow-up survey determines that the TGH has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the TGH license.

ii. If the on-site follow-up survey determines that the TGH has not corrected the deficient practices or has not maintained compliance during the period of the provisional license, the provisional renewal license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee, if no timely informal reconsideration or administrative appeal is filed pursuant to this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6213. Changes in Licensee Information or Personnel**

A. Any change regarding the TGH's name, "doing business as" name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the change. Any change regarding the TGH name or "doing business as" name requires a change to the facility license and shall require a \$25 fee for the issuance of an amended license.

B. Any change regarding the facility's key administrative personnel shall be reported in writing to the department within five days of the change.

1. Key administrative personnel shall include the:

a. supervising practitioner;

b. clinical director; and

c. house manager.

2. The TGH provider's notice to the department shall include the individual's:

a. name;

b. hire date; and

c. qualifications.

C. A change of ownership (CHOW) of a TGH shall be reported in writing to the department at least five days prior to the change of ownership.

1. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all of the application requirements are completed and approved by the department, a new license shall be issued to the new owner.

2. A PRTF that is under license revocation or denial of license renewal may not undergo a CHOW.

D. A TGH that intends to change the physical address of its geographic location is required to have plan review approval, Office of State Fire Marshal approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation of the facility.

1. A written notice of intent to relocate must be submitted to HSS when the plan review request is submitted to the department for approval.

2. Relocation of the TGH's physical address results in a new anniversary date and the full licensing fee must be paid.

E. Any request for a duplicate license must be accompanied by a \$25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6215. Renewal of License**

A. To renew a license, a TGH must submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;

2. a copy of the current on-site inspection report with approval for occupancy from the Office of the State Fire Marshal and the Office of Public Health;

3. proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;

b. general and professional liability insurance of at least \$300,000; and

c. worker's compensation insurance;

4. the license renewal fee; and

5. any other documentation required by the department.

B. The department may perform an on-site survey and inspection upon annual renewal of a license.

C. Failure to submit a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the TGH license.

D. The renewal of a license does not in any manner affect any sanction, civil fine, or other action imposed by the department against the facility.

E. If an existing licensed TGH has been issued a notice of license revocation, suspension, or termination, and the

facility's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6217. Deemed Status**

A. A licensed TGH may request deemed status from the department. The department may accept accreditation in lieu of a routine on-site licensing survey provided that:

1. the accreditation is obtained through an organization approved by the department;

2. all services provided under the TGH license must be accredited; and

3. the provider forwards the accrediting body's findings to the Health Standards Section within 30 days of its accreditation.

B. If approved, accreditation will be accepted as evidence of satisfactory compliance with all of the provisions of these requirements.

C. Occurrence of any of the following may be grounds for the department to perform a licensing survey on an accredited TGH provider with deemed status:

1. any valid complaint in the preceding 12-month period;

2. addition of services;

3. a change of ownership in the preceding 12-month period;

4. issuance of a provisional license in the preceding 12-month period;

5. serious violations of licensing standards or professional standards of practice that were identified in the preceding 12-month period that placed clients at risk for harm;

6. a report of inappropriate treatment or service resulting in death or serious injury; or

7. a change in geographic location.

D. A TGH with deemed status is responsible for complying with all of the provisions of this Rule and is subject to all of the provisions of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6219. Licensing Surveys**

A. Prior to the initial license being issued to the TGH, an initial licensing survey shall be conducted on-site at the facility to assure compliance with licensing standards. Except for facilities currently maintain a license as a child residential facility from DCF, a TGH shall not provide services to any resident until the initial licensing survey has been performed and the facility found in compliance with the licensing standards. The initial licensing survey shall be an announced survey.

B. Once an initial license has been issued, the department may conduct licensing and other surveys at intervals deemed necessary by the department to determine compliance with licensing standards and regulations, as well as other required statutes, laws, ordinances, rules, regulations, and fees. These surveys shall be unannounced.

C. A follow-up survey may be conducted for any survey where deficiencies have been cited to ensure correction of

the deficient practices. The department shall issue written notice to the provider of the results of the follow-up survey.

D. An acceptable plan of correction may be required for any survey where deficiencies have been cited.

E. If deficiencies have been cited during a licensing survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. civil fines;

2. directed plans of correction; and

3. license revocations.

F. Surveyors and staff on behalf of the department shall be:

1. given access to all areas of the facility and all relevant files during any licensing survey or other survey; and

2. allowed to interview any provider staff, resident, or participant as necessary to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6221. Complaint Surveys**

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13 et seq., on any TGH, including those with deemed status.

B. Complaint surveys shall be unannounced surveys.

C. An acceptable plan of correction may be required by the department for any complaint survey where deficiencies have been cited. If the department determines other action, such as license revocation is appropriate, a plan of correction may not be required and the facility will be notified of such action.

D. A follow-up survey may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices. If the department determines that other action, such as license revocation, is appropriate, a follow-up survey may not be required. The facility will be notified of any action.

E. The department may issue appropriate sanctions, including but not limited to, civil fines, directed plans of correction, and license revocations, for deficiencies and non-compliance with any complaint survey.

F. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff, resident, or participant, as necessary or required to conduct the survey.

G. A TGH which has been cited with violations or deficiencies on a complaint survey has the right to request an informal reconsideration of the validity of the violations or deficiencies. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 10 calendar days of the facility's receipt of the notice of the violations or deficiencies.

H. A complainant shall have the right to request an informal reconsideration of the findings of the complaint survey or investigation that resulted from his/her complaint. The written request for an informal reconsideration shall be submitted to the department's Health Standards Section. The department must receive the written request within 30

calendar days of the complainant's receipt of the results of the complaint survey or investigation.

I. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as an administrative review. The facility or complainant shall submit all documentation or information for review for the informal reconsideration and the department shall consider all documentation or information submitted. There is no right to appear in person at the informal reconsideration of a complaint survey or investigation. Correction of the violation or deficiency shall not be the basis for the reconsideration. The provider and the complainant shall be notified in writing of the results of the informal reconsideration.

J. Except for the right to an administrative appeal provided in R.S. 40:2009.16(A), the informal reconsideration shall constitute final action by the department regarding the complaint survey or investigation, and there shall be no right to an administrative appeal.

1. To request an administrative appeal pursuant to R.S. 40:2009.16, the written request for the appeal shall be submitted to the Division of Administrative Law (DAL) and must be received within 30 calendar days of the receipt of the results of the informal reconsideration.

2. The administrative law judge shall not have the authority to overturn or delete deficiencies or violations and shall not have the authority to add deficiencies or violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6223. Statement of Deficiencies**

A. The following statements of deficiencies issued by the Department to the TGH shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and

2. any complaint survey statement of deficiencies issued after the most recent annual survey.

B. Any statement of deficiencies issued by the department to a TGH shall be available for disclosure to the public 30 calendar days after the provider submits an acceptable plan of correction of the deficiencies or 90 calendar days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in this Chapter, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the deficient practice, of the violation, or of the noncompliance shall not be the basis for the reconsideration.

2. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section and will be considered timely if received by HSS within 10 days of the provider's receipt of the statement of deficiencies.

3. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

4. Except as provided for complaint surveys pursuant to R.S. 40:2009.11 et seq., and as provided in this Chapter

for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

5. The provider shall be notified in writing of the results of the informal reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6225. Cessation of Business**

A. A TGH that intends to close or cease operations shall comply with the following procedures:

1. give 30 days advance written notice to:

a. HSS;

b. the prescribing physician; and

c. the parent(s) or legal guardian or legal representative of each client;

2. notify the department of the location where the records will be stored and the contact person for the records; and

3. provide for an orderly discharge and transition of all of the clients in the facility.

B. If a TGH fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a TGH for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6227. Denial of License, Revocation of License, or Denial of License Renewal**

A. In accordance with the provisions of the Administrative Procedure Act, the department may:

1. deny an application for an initial license;

2. deny a license renewal; or

3. revoke a license.

B. Denial of an Initial License

1. The department shall deny an initial license when the initial licensing survey finds that the TGH provider is noncompliant with any licensing laws or regulations or with any other required statutes, laws, ordinances, rules or regulations and such noncompliance presents a potential threat to the health, safety, or welfare of the clients who will be served by the facility.

2. The department shall deny an initial license for any of the reasons in this Chapter that a license may be revoked or non-renewed.

C. Voluntary Non-Renewal of a License

1. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

2. If a provider fails to timely renew its license, the facility shall immediately cease providing services, unless the provider is actively treating clients, in which case the provider shall:

a. immediately provide written notice to the department of the number of clients that are receiving treatment at the TGH;

b. immediately provide written notice to the prescribing physician and to every client, parent, legal guardian, or legal representative of the following:

- i. voluntary non-renewal of the facility's license;
- ii. date of closure of the facility; and
- iii. plans for orderly transition of the client;

c. discharge and transition of each client within 15 days of voluntary non-renewal; and

d. notify the department of the location where records will be stored and the contact person for the records.

3. If a TGH fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a PRTF for a period of two years.

D. Revocation of License or Denial of License Renewal. A TGH license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the TGH licensing laws, rules and regulations, or with other required statutes, laws, ordinances, rules, or regulations;

2. failure to comply with the terms and provisions of a settlement agreement or education letter with or from the department, the Attorney General's Office, any regulatory agency, or any law enforcement agency;

3. failure to uphold a client's rights whereby deficient practices result in harm, injury, or death of a client;

4. negligence or failure to protect a client from a harmful act of an employee or other client including, but not limited to:

- a. mental or physical abuse, neglect, exploitation, or extortion;
- b. any action posing a threat to a client's health and safety;
- c. coercion;
- d. threat or intimidation;
- e. harassment; or
- f. criminal activity;

5. failure to notify the proper authorities, as required by federal or state law, rules, or regulations, of all suspected cases of the acts outlined in §6227.D.4;

6. knowingly making a false statement in any of the following documentation, including but not limited to:

- a. application for initial license or renewal of license;
- b. data forms;
- c. records, including:
  - i. clinical;
  - ii. client; or
  - iii. provider;
- d. matters under investigation by the department or the Office of Attorney General; or
- e. information submitted for reimbursement from any payment source;

7. knowingly making a false statement or providing false, forged, or altered information or documentation to department employees or to law enforcement agencies;

8. the use of false, fraudulent or misleading advertising;

9. fraudulent operation of a TGH by the owner, administrator, manager, member, officer, or director;

10. an owner, officer, member, manager, administrator, director, or person designated to manage or supervise client care has pled guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court.

a. For purposes of these provisions, conviction of a felony means a felony relating to any of the following:

- i. violence, abuse, or neglect of another person;
- ii. misappropriation of property belonging to another person;
- iii. cruelty, exploitation, or sexual battery of a juvenile or the infirmed;
- iv. a drug offense;
- v. crimes of a sexual nature;
- vi. possession or use of a firearm or deadly weapon; or
- vii. fraud or misappropriation of federal or state funds, including Medicare or Medicaid funds;

11. failure to comply with all of the reporting requirements in a timely manner as required by the department;

12. failure to allow or refusal to allow the department to conduct an investigation or survey, or to interview provider staff or the residents;

13. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

14. failure to allow or refusal to allow access to facility or resident records by authorized departmental personnel;

15. bribery, harassment, or intimidation of any resident or family member designed to cause that client or family member to use or retain the services of any particular TGH provider;

16. cessation of business or non-operational status; or

17. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

18. failure to timely pay outstanding fees, fines, sanctions, or other debts owed to the department; or

19. failure to maintain accreditation, or for a new TGH that has applied for accreditation, the failure to obtain accreditation.

E. If a TGH license is revoked or renewal is denied, (other than for cessation of business or non-operational status) or the license is surrendered in lieu of an adverse action, any owner, officer, member, director, manager, or administrator of such TGH may be prohibited from opening, managing, directing, operating, or owning another TGH for a period of two years from the date of the final disposition of the revocation, denial action, or surrender.

F. The denial of the license renewal application shall not affect in any manner the license revocation, suspension, or termination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§6229. Notice and Appeal of License Denial, License Revocation, License Non-Renewal, and Appeal of Provisional License**

A. Notice of a license denial, license revocation or license non-renewal shall be given to the provider in writing.

B. The TGH provider has a right to an informal reconsideration of the license denial, license revocation, or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The TGH provider shall request the informal reconsideration within 10 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration must be in writing and shall be forwarded to the Health Standards Section.

2. The request for informal reconsideration must include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the provider shall receive written notification of the date of the informal reconsideration.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the denial, revocation or non-renewal shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider shall be notified in writing of the results of the informal reconsideration.

C. The TGH provider has a right to an administrative appeal of the license denial, license revocation, or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by the provider.

1. The TGH shall request the administrative appeal within 30 calendar days of the receipt of the notice of the results of the informal reconsideration of the license denial, license revocation, or license non-renewal.

a. The TGH provider may forego its rights to an informal reconsideration, and if so, the facility shall request the administrative appeal within 30 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal.

2. The request for administrative appeal must be in writing and shall be submitted to the DAL or its successor. The request shall include any documentation that demonstrates that the determination was made in error and must include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the DAL or its successor, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the DAL issues a final administrative decision.

a. If the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a resident, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The facility shall be notified of this determination in writing.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal shall not be a basis for the administrative appeal.

D. If an existing licensed TGH has been issued a notice of license revocation and the provider's license is due for annual renewal, the department shall deny the license renewal. The denial of the license renewal does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal, or license revocation, the DAL or its successor shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the DAL or its successor if good cause is shown.

1. If the final DAL decision is to reverse the license denial, the license non-renewal, or the license revocation, the facility's license will be re-instated or granted upon the payment of any licensing fees or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final DAL decision is to affirm the license non-renewal or the license revocation, the provider shall discharge any and all clients receiving services according to the provisions of this Chapter. Within 10 days of the final agency decision, the facility shall notify the department's licensing section in writing of the secure and confidential location of where the clients' records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new TGH or a provisional license to an existing TGH. The issuance of a provisional license is not considered to be a denial of license, a denial of license renewal, or a license revocation.

G. A provider with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey, shall have the right to an informal reconsideration and the right to an administrative appeal regarding the deficiencies cited at the follow-up survey.

1. The correction of a violation, noncompliance, or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or for the administrative appeal.

2. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

3. The provider shall submit a written request for informal reconsideration within five calendar days of receipt of the department's notice of the results of the follow-up survey.

a. The provider may forego its right to an informal reconsideration.

4. The provider shall submit a written request to the Division of Administrative Law or its successor for an administrative appeal within 15 calendar days of receipt of the department's notice of the results of the informal reconsideration.

a. If the provider has opted to forego the informal reconsideration process, a written request for an administrative appeal shall be made within 15 calendar days

of receipt of the department's notice of the results of the follow-up survey.

H. A provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge the clients unless the DAL issues a stay of the expiration.

1. A stay may be granted upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing and upon a showing that there is no potential harm to the residents being served by the provider.

I. If a timely administrative appeal has been filed by a provider with a provisional initial license that has expired or by an existing provider whose provisional license has expired under the provisions of this Chapter, the DAL or its successor shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law if good cause is shown.

1. If the final DAL decision is to remove all deficiencies, the provider's license will be reinstated upon the payment of any licensing fees or other fees due to the department, and the payment of any outstanding sanctions due to the department.

2. If the final DAL decision is to uphold the deficiencies and affirm the expiration of the provisional license, the facility shall discharge all clients receiving services. Within 10 calendar days of the final agency decision, the provider shall notify HSS in writing of the secure and confidential location of where the client's records will be stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Administration and Organization

### §6233. General Provisions

A. Purpose and Organizational Structure. The purpose of the TGH shall be clearly defined in a statement filed with the department. The statement includes the:

1. program philosophy;
2. program goals and objectives;
3. ages, sex and characteristics of clients accepted for care;
4. geographical area served;
5. types of services provided;
6. description of admission policies; and
7. needs, problems, situations or patterns best addressed by the provider's program; and
8. an organizational chart of the provider which clearly delineates the line of authority.

B. A TGH shall provide supervision and services that:

1. conform to the department's rules and regulations;
2. meet the needs of the clients as identified and addressed in the comprehensive treatment plan;
3. provide for the full protection of clients' rights; and
4. promote the social, physical and mental well-being of clients.

C. A TGH shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to the department.

D. A TGH shall allow designated representatives of the department, in performance of their mandated duties, to:

1. inspect all aspects of the TGH's operations which directly or indirectly impact clients; and
2. conduct interviews with any staff member or client of the provider.

E. A TGH shall make available, upon request, the legal ownership documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §6237. Governing Body

A. A TGH shall have an identifiable governing body with responsibility for and authority over the policies and operations of the home.

1. A TGH shall have documents identifying all members of the governing body, their addresses, their terms of membership, officers of the governing body and terms of office of any officers.

2. The governing body shall be comprised of three or more persons and shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of a TGH shall:

1. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;
2. ensure that the provider is adequately funded and fiscally sound;
3. review and approve the provider's annual budget;
4. designate qualified persons to act as supervising practitioner and clinical director and delegate sufficient authority to these persons to manage the facility;
5. formulate and annually review, in consultation with the clinical director and supervising practitioner, written policies concerning the provider's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;
6. annually evaluate the supervising practitioner's and clinical director's performance;
7. meet with designated representatives of the department whenever required to do so;
8. inform the department, or its designee, prior to initiating any substantial changes in the services provided by the provider; and
9. ensure statewide criminal background checks in accordance with R.S. 15:587.1.

C. A TGH provider shall maintain the following documents:

1. minutes of formal meetings and by-laws of the governing body;
2. documentation of the provider's authority to operate under state law;
3. all leases, contracts and purchases-of-service agreements to which the provider is a party;
4. insurance policies;
5. annual budgets and audit reports; and
6. a master list of all the community resources used by the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §6239. Policies and Procedures

A. The TGH shall have written policies and procedures approved by the owner or governing body, which must be implemented and followed, that address at a minimum the following:

1. confidentiality and confidentiality agreements;
2. security of files;
3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation and kickbacks;
4. personnel;
5. client rights;
6. grievance procedures;
7. client funds;
8. emergency preparedness;
9. abuse and neglect;
10. incidents and accidents, including medical emergencies;
11. universal precautions;
12. documentation;
13. admission and discharge procedures;
14. bedroom assignment for clients; and
15. behavior management.

B. A TGH shall have written personnel policies, which must be implemented and followed, that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members, whether directly employed, contract or volunteer;
2. written job descriptions for each staff position, including volunteers;
3. policies that shall, at a minimum, be consistent with Office of Public Health guidelines, to indicate whether, when and how staff have a health assessment;
4. an employee grievance procedure;
5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment, whether that abuse or mistreatment is done by another staff member, a family member, a client or any other person;
6. a nondiscrimination policy;
7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor or the Clinical Director as possible to prevent the disease or illness from spreading to other clients or personnel.

C. A TGH shall maintain the requirements for financial viability under this rule at all times.

#### D. Behavior Management

1. The provider shall develop and implement written policies and procedures for the management of behaviors to be used on facility-wide level, insuring that procedures begin with the least restrictive, most positive measures and follow a hierarchy of acceptable measures. The policies and procedures shall be provided to all provider staff and shall include:

- a. appropriate and inappropriate behaviors of clients;
- b. consequences of inappropriate behaviors of clients;

c. the phases of behavior escalation and appropriate intervention methods to be used at each level.

d. documentation in the client's record of the use of any behavioral management measures.

E. House Rules and Regulations. A provider shall have a clearly written list of rules and regulations governing conduct for clients in care and shall document that these rules and regulations are made available to each staff member, client and, where appropriate, the client's parent(s) or legal guardian(s). A copy of the House rules shall be given to clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission and shall be posted and accessible to all employees and clients.

F. Limitations on Potentially Harmful Responses or Punishments. A provider shall have a written list of prohibited responses and punishments to clients by staff members and shall document that this list is made available to each staff member, client and, where appropriate, the client's parent(s) or legal guardian(s).

1. This list shall include the following prohibited responses/punishments:

- a. any type of physical hitting or other painful physical contact except as required for medical, dental or first aid procedures necessary to preserve the child's life or health;
- b. physical, chemical and mechanical restraints;
- c. requiring a client to take an extremely uncomfortable position;
- d. verbal or psychological abuse, ridicule or humiliation;
- e. withholding of a meal, except under a physician's order;
- f. denial of sufficient sleep, except under a physician's order;
- g. requiring a child to remain silent for a long period of time;
- h. denial of shelter, warmth, clothing or bedding;
- i. assignment of harsh physical work.
- j. physical exercise or repeated physical motions;
- k. excessive denial of usual services;
- l. denial of visiting or communication with family or legal guardian;
- m. extensive withholding of emotional response;
- n. any other cruel, severe, unusual, degrading or unnecessary punishment.

2. A provider shall not punish groups of clients for actions committed by an individual.

3. Children shall neither punish nor supervise other children except as part of an organized therapeutic self government program that is conducted in accordance with written policy and is supervised directly by staff. Such programs shall not be in conflict with regulations regarding behavior management.

4. Punishment shall not be administered by any persons who are not known to the client.

#### G. Restraints

1. A TGH shall develop and implement a written policy which prohibits the use of any form of mechanical, physical or chemical restraints. TGH providers may have a policy that allows passive physical restraint, but it shall be



utilized only when the child's behaviors escalate to a level of possibly harming himself/herself or others.

2. The TGH's policy shall provide that passive physical restraints are only to be performed by two trained staff personnel in accordance with an approved curriculum. A single person restraint can be initiated in a life threatening crisis with support staff in close proximity to provide assistance.

#### H. Time-Out Procedures

1. A provider using time-out rooms for seclusion of clients for brief periods shall have a written policy governing the use of time-out procedures. This policy shall ensure that:

- a. the room shall be unlocked;
- b. time-out procedures are used only when less restrictive measures have been used without effect. Written documentation of less restrictive measures used shall be required;
- c. emergency use of time-out shall be approved by the clinical director for a period not to exceed one hour;
- d. time-out used as an individual behavior management plan shall be part of the overall plan of treatment;
- e. the plan shall state the reasons for using time-out and the terms and conditions under which time-out will be terminated or extended, specifying a maximum duration of the use of the procedure that shall under no circumstances exceed eight hours;
- f. when a child is in time-out, a staff member shall exercise direct physical supervision of the child at all times;
- g. a child in time-out shall not be denied access to bathroom facilities, water or meals.

I. Copies of the behavior management policy, the prohibited response and punishment policy, including restraint prohibitions and time out procedures, shall be provided in triplicate upon admission. The child and parent(s) or legal guardian(s) shall sign all three copies. The child and parent(s) or legal guardian(s) shall retain one copy each and the provider shall retain the other copy in the child's record.

J. Copies of the behavior management policy, the prohibited response and punishment policy, including restraint prohibitions and time out procedures, shall be provided in duplicate to each new employee upon hiring. The employee shall sign both copies. The employee shall retain one copy and the provider shall retain the other copy in the employee's personnel record.

K. A TGH shall comply with all federal and state laws, rules and regulations in the development and implementation of its policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### §6241. Personnel Records

A. A TGH shall have a personnel file for each staff member who provides services for the TGH in the facility. Each record shall contain:

1. the application for employment and/or resume;
2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;
3. any required medical examinations;

4. evidence of current applicable professional credentials/certifications according to state law or regulations;

5. annual performance evaluations;

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the center; and

7. the employee's starting and termination dates.

B. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement that he/she wishes to make to the file at any time.

C. A TGH shall retain the staff member's personnel file for at least three years after the staff member's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### Subchapter D. Provider Responsibilities

##### §6245. General Provisions

A. The TGH shall have at least one staff member on duty per shift to have current CPR and First Aid certification.

B. For contract services, the TGH shall have formal written agreements with professionals or other entities to provide services which may or may not be directly offered by facility staff. Both parties shall review and document review of each agreement annually.

C. The TGH shall ensure that a criminal background check is conducted on employees in accordance with the provisions of R.S. 15:587.1 and R.S. 46:51.2.

1. The TGH shall have a written policy and procedure for obtaining the criminal background check.

2. No person, having any supervisory or other interaction with clients, shall be hired until such person has submitted his or her fingerprints to the Louisiana Bureau of Criminal Identification and Information, and it has been determined that such person has not been convicted of or pled nolo contendere to a crime listed in R.S. 15:587.1(C). This shall include any employee or non-employee, including independent contractors, consultants, students, volunteers, trainees, or any other associated person, who performs paid or unpaid work with or for the TGH.

3. Contractors hired to perform work which does not involve any contact with clients shall not be required to have a criminal background check if accompanied at all times by a staff person if clients are present in the facility.

4. Any employee who is convicted of or has pled nolo contendere to any crime listed in R.S. 15:587.1(C) shall not continue employment after such conviction or nolo contendere plea.

D. The TGH shall check the Louisiana State Nurse Aide Registry and the Louisiana Direct Service Worker Registry to ensure that each member of its direct care staff does not have a finding placed against him/her on either registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

##### §6247. Staffing Requirements

A. There shall be a single organized professional staff that has the overall responsibility for the quality of all clinical care provided to clients, for the ethical conduct and

professional practices of its members, as well as for accounting therefore to the governing body. The manner in which the professional staff is organized shall be consistent with the TGH's documented staff organization and policies and shall pertain to the setting where the TGH is located. The organization of the professional staff and its policies shall be approved by the TGH's governing body.

B. The staff of a TGH must have the appropriate qualifications to provide the services required by its clients comprehensive treatment plans. Each member of the direct care staff may not practice beyond the scope of his/her license or certification.

#### C. Staffing Ratios

1. All staffing shall be adequate to meet the individualized treatment needs of the clients and the responsibilities of the staff. Staffing schedules shall reflect overlap in shift hours to accommodate information exchange for continuity of client treatment, adequate numbers of staff reflective of the tone of the unit, appropriate staff gender mix and the consistent presence and availability of professional staff. In addition, staffing schedules should ensure the presence and availability of professional staff on nights and weekends, when parents are available to participate in family therapy and to provide input on the treatment of their child.

2. A TGH shall have a minimum of two staff on duty per shift in each living unit, with at least one staff person awake during overnight shifts with the ability to call in as many staff as necessary to maintain safety and control in the facility, depending upon the needs of the current population at any given time.

3. A ratio of not less than one staff to four clients is maintained at all times; however, two staff must be on duty at all times with at least one being direct care staff when there is a client present.

D. The staff shall have the following acceptable hours and ratios:

1. Supervising Practitioner. The supervising practitioner's hours shall be adequate to provide the necessary direct services and to meet the administrative and clinical responsibilities of supervision and of directing the care in a TGH. The number of hours the supervising practitioner needs to be on-site is dependent upon the size of program and the unique needs of each individual client.

2. Clinical Director. The clinical director shall have adequate hours to fulfill the expectations and responsibilities of the clinical director.

3. Nurse. The TGH shall have at least one licensed nurse available to meet the nursing health care needs of the clients and who is on-call 24 hours a day and can be on-site within 30 minutes as needed.

4. Therapist. The ratio of the therapist to clients served shall be no greater than 1:16. Each therapist shall be available at least three hours per week for individual and group therapy and two hours per month for family therapy.

5. Direct Care Staff. The ratio of direct care staff to clients served shall be 1:4 with a minimum of two staff on duty per shift for an 8 bed capacity. This ratio may need to be increased based on the assessed level of acuity of the youth or if treatment interventions are delivered in the community and offsite.

#### E. Orientation

1. All staff shall receive orientation prior to being assigned to provide client care without supervision.

2. Orientation includes, but is not limited to:

- a. confidentiality;
- b. grievance process;
- c. fire and disaster plans;
- d. emergency medical procedures;
- e. organizational structure;
- f. program philosophy;
- g. personnel policy and procedure;
- h. detecting and mandatory reporting of client

abuse, neglect or misappropriation;

- i. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

- j. basic skills required to meet the health needs and problems of the client;

- k. crisis intervention and the use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;

- l. the safe use of time out and passive physical restraint (including a practice element in the chosen method); and

- m. recognizing side effects of all medications including psychotropic drugs.

F. Training. All staff shall receive training according to facility policy at least annually and as deemed necessary depending on the needs of the clients. The TGH must maintain documentation of all training provided to its staff. The TGH shall meet the following requirements for training.

1. Staff shall have ongoing education, training and demonstrated knowledge of at least the following:

- a. techniques to identify staff and client behaviors, events, and environmental factors that may trigger emergency safety situations;

- b. the use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations;

- c. the safe use of time out for behavior management, including the ability to recognize any adverse effects as a result of the use of time out; and

- d. the safe use of passive physical restraint (including a practice element in the chosen method).

2. Certification in the use of cardiopulmonary resuscitation, including periodic recertification, is required within 30 days of hire.

3. Training shall be provided only by staff who are qualified by education, training, and experience.

4. Staff training must include training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

5. Staff must be trained and demonstrate competency before participating in an emergency safety intervention.

6. All training programs and materials used by the facility must be available for review by HSS.

G. Staff Evaluation. The TGH shall complete an annual performance evaluation of all staff members. For any person who interacts with clients, the provider's performance

evaluation procedures shall address the quality and nature of a staff member's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§6249. Personnel Qualifications and Responsibilities**

A. Professional Staffing Standards. The following are the minimum staffing requirements for TGHs:

1. Supervising Practitioner

a. A supervising practitioner shall be one of the following:

i. a physician with an unrestricted license to practice in Louisiana and who meets all of the following qualifications:

(a). an unrestricted drug enforcement agency (DEA) and Louisiana controlled substance license;

(b). if the physician holds an additional license(s) in another state or jurisdiction, that license(s) must be unrestricted and be documented in the employment record;

(c). board-certification in general psychiatry; and

(d). satisfactory completion of a specialized psychiatric residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME), as evidenced by a copy of the certificate of training or a letter of verification of training from the training director, which includes the exact dates of training and verification that all ACGME requirements have been satisfactorily met. If training was completed in a psychiatric residency program not accredited by the ACGME, the physician must demonstrate that he/she meets the most current requirements as set forth in the American Board of Psychiatry and Neurology's Board policies, rules and regulations regarding information for applicants for initial certification in psychiatry;

ii. a psychologist/medical psychologist must have the following:

(a). an unrestricted license to practice psychology in Louisiana issued by the Louisiana State Board of Examiners of Psychologists under R.S. 37:2351 et seq., or an unrestricted license to practice medical psychology issued by the Louisiana State Board of Medical Examiners under R.S. 37.1360.51 et seq.;

(b). unrestricted DEA and Louisiana controlled substance licenses, if the supervising practitioner is a medical psychologist;

(c). demonstrated competence and experience in the assessment, diagnosis, and treatment of children and adolescents who have mental and emotional disorders or disabilities, alcoholism and substance abuse. Acceptable competence/experience is specialized training at the internship or post-doctoral level before licensure and/or being in the independent practice of child/adolescent psychology in private practice, as a consultant, or within an outpatient or inpatient treatment facility for a period of at least two years post-licensure.

b. A supervising practitioner's responsibilities shall include, but are not limited to:

i. reviewing the referral PTA and completing an initial diagnostic assessment at admission or within 24 hours of admission and prior to service delivery;

ii. assuming accountability to direct the care of the client at the time of admission and during the entire TGH stay;

iii. supervising the development of a comprehensive treatment plan in the seven days following admission.

iv. providing clinical direction in the development of the comprehensive treatment plan;

v. at least every 14 days or more often as necessary, providing:

(a). a face-to-face assessment/service to the client;

(b). a review of the need for continued care; and

(c). continued supervision of the comprehensive treatment plan;

vi. providing crisis management including supervision and direction to the staff to resolve any crisis of the client's condition;

vii. monitoring and supervising an aggressive plan to transition the client from the program into less intensive treatment services as medically necessary;

viii. providing 24-hour on call coverage, seven days a week;

ix. assuming professional responsibility for the services provided and assure that the services are medically appropriate.

2. Clinical Director

a. A clinical director shall be a LMHP.

b. The clinical director must have the appropriate qualifications to meet the responsibilities of the clinical director and the needs of the TGH's clients. A clinical director may not practice beyond his/her scope of practice license.

c. If the TGH treats clients with both mental health and substance abuse conditions, then the clinical director must have the training and experience necessary to practice in both fields.

d. Practitioners who meet the criteria of the clinical director may also serve as the TGH's therapist.

e. The responsibilities of a clinical director include, but are not limited to:

i. overseeing, implementing, and coordinating treatment services;

ii. continually incorporating new clinical information and best practices into the program to assure program effectiveness and viability;

iii. overseeing the process to identify, respond to, and report crisis situations on a 24-hour per day, 7 day per week basis;

iv. clinical management for the program in conjunction with and consultation with the supervising practitioner;

v. assuring confidentiality and quality organization and management of clinical records and other program documentation; and

vi. applying and supervising the gathering of outcome data and determining the effectiveness of the program.

3. TGH Therapist

a. A TGH therapist shall be an LMHP or an individual with a Master's degree in social work, counseling, psychology or a related human services field.

b. The role and the responsibilities of the TGH Therapist include but are not limited to:

i. reporting to the clinical director and supervising practitioner for clinical and non-clinical guidance and direction;

ii. communicating treatment issues to the clinical director and to the supervising practitioner as needed;

iii. providing individual, group, family, psychotherapy and/or substance abuse counseling;

iv. assisting in developing/updating treatment plans for clients in TGH care in conjunction with the other multidisciplinary team members;

v. providing assistance to direct care staff and implementing the treatment plan when directed by the clinical director;

vi. providing clinical information to the multidisciplinary team and attending treatment team meetings; and

vii. providing continuous and ongoing assessments to assure clinical needs of clients and parents(s)/caregivers(s) are met.

#### 4. Nursing Services

a. The TGH shall have a licensed registered nurse who shall supervise the nursing services of the TGH. He/She must be operating within his/her scope of practice and have documented experience and training in the treatment of children or adolescents.

b. All nursing services must be furnished by licensed nurses. All nursing services furnished in the TGH shall be provided in accordance with acceptable nursing professional practice standards.

c. The responsibilities of the registered nurse include, but are not limited to:

i. providing a nursing assessment within 24 hours of admission for each client;

ii. establishing a system of operation for the administration and supervision of the clients' medication and medical needs;

iii. training staff regarding the potential side effects of medications, including psychotropic drugs;

iv. coordinating psychiatric and medical care per physician's direction; and

v. monitoring and supervising all staff providing nursing care and services to clients.

d. The responsibilities of all nurses include, but are not limited to:

i. reporting to the clinical director for programmatic guidance;

ii. reporting to the supervising practitioner as necessary regarding medical, psychiatric, and physical treatment issues;

iii. reviewing all medical treatment orders and implementing orders as directed;

iv. serving as a member of the multidisciplinary treatment team;

v. administering medications and monitoring the clients' responses to medications;

vi. providing education on medication and other health issues as needed;

vii. abiding by all state and federal laws, rules, and regulations; and

viii. identifying and assessing the clients for dental and medical needs.

#### 5. House Manager

a. The house manager shall have the following qualifications:

i. be at least 21 years of age and at least 3 years older than the oldest client; and

ii. possess one of the following:

(a) a Bachelor's degree in a human services field and one year of documented employment with a health care provider that treats clients with mental illness; or

(b) two years of course work toward a Bachelor's degree in a human services field and two years of documented employment with a health care provider that treats clients with mental illness.

b. The house manager's responsibilities include, but are not limited to the following:

i. supervising the activities of the facility when the professional staff is on call, but not on duty;

ii. identifying, respond to, and report any crisis situation to the clinical director on a 24-hour, seven day per week basis;

iii. reporting incidents of abuse, neglect and misappropriation to the clinical director;

iv. assessing situations related to relapse;

v. coordinating and consulting with the clinical director as needed; and

vi. providing access to appropriate medical care when needed.

#### 6. Direct Care Staff

a. All direct care staff shall have at least the following qualifications:

i. a high school diploma or equivalent;

ii. at least 18 years of age, but must also be at least three years older than all clients under the age of 18;

iii. a minimum of two years of experience working with children, be equivalently qualified by education in the human services field, or have a combination of work experience and education with one year of education substituting for one year of experience;

iv. not have a finding on the Louisiana State Nurse Aide Registry and the Louisiana Direct Service Worker Registry against him/her;

v. be certified in crisis prevention/management (example: CPI, Mandt, etc.);

vi. be proficient in de-escalation techniques; and

vii. be certified by the state of Louisiana.

b. The responsibilities of direct care staff include, but are not limited to:

i. completing the required program orientation and training, and demonstrating competency prior to being assigned to direct care;

ii. having a clear understanding of the treatment plan;

iii. assisting clients in developing social, recreational, and other independent living skills as appropriate;

iv. being aware of safety issues and providing safety intervention within the milieu;

v. reporting all crisis or emergency situations to the clinical director or his/her designee in the absence of the clinical director;

vi. reporting to the therapist or clinical director as necessary regarding treatment issues;

vii. understanding the program philosophy regarding behavior management and applying this philosophy in daily interactions with clients in TGH care; and

viii. having the ability to effectively implement de-escalation techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6251. Client Records**

A. Client records shall be maintained in the TGH and shall be kept secure and confidential. The provider shall have a written record for each client which shall include:

1. identifying data including:
  - a. name;
  - b. date of birth;
  - c. address;
  - d. telephone number;
  - e. social security number; and
  - f. legal status;
2. the client's pretreatment assessment, the referral and documentation pertaining to admission from Medicaid or its designee, initial diagnostic interview, nursing assessment and comprehensive treatment plan plus any modifications or updates;
3. the client's history including, where applicable:
  - a. family data;
  - b. next of kin;
  - c. educational background;
  - d. employment record;
  - e. prior medical history; and
  - f. prior service history;
4. written authorization signed by the client or, in the case of a minor, the legally responsible person for emergency care;
5. written authorization signed by the client or, in the case of a minor, the legally responsible person for maintaining the client's money, if applicable;
6. a current balance sheet, containing all financial transactions and required signatures, involving the personal funds of the client deposited with the provider;
7. required assessment(s) and additional assessments that the provider may have received or is privy to;
8. the names, addresses, and telephone numbers of the client's physician(s).
9. legible written progress notes or equivalent documentation and reports of the services delivered for each client for each visit. The written progress notes shall include, at a minimum:
  - a. the date and time of the visit and services;
  - b. the services delivered;
  - c. who delivered or performed the services;
  - d. observed changes in the physical or mental condition(s) of the client if applicable; and
  - e. doctor appointments scheduled or attended that day;
10. health and medical records of the client, including:
  - a. a medical history, including allergies; and

b. a description of any medical treatment or medication necessary for the treatment of any medical condition;

11. a copy of any advance directive that may have been executed by the client;

12. reports of any incidents of abuse, neglect, accidents or critical incidents, including use of passive physical restraints; and

13. reports of any client's grievances and the conclusions or dispositions of these reports. If the client's grievance was in writing, a copy of the written grievance shall be included.

B. TGHs shall maintain client records for a period of 10 years from discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6253. Client Funds and Assets**

A. The TGH shall develop and implement written policies and procedures governing the maintenance and protection of client funds. These policies and procedures shall have provisions which include, but are not limited to, the following:

1. the amount each client can have;
2. the criteria by which clients can access their money;
3. the procedure for disbursement; and
4. staff who can access such funds.

B. If the TGH manages a client's personal funds, the facility must furnish a written statement listing the client's rights regarding personal funds to the client and/or his/her legal or responsible representative.

C. If a client chooses to entrust funds with the facility, the TGH shall obtain written authorization from the client and/or his/her legal or responsible representative for the safekeeping and management of the funds.

D. The TGH shall:

1. provide each client with an account statement upon request with a receipt listing the amount of money the facility is holding in trust for the client;
2. maintain a current balance sheet containing all financial transactions to include the signatures of staff and the client for each transaction;
3. provide a list or account statement regarding personal funds upon request of the client; and
4. not commingle the clients' funds with the provider's operating account.

E. If the TGH is managing funds for a client and he/she is discharged, any remaining funds shall be refunded to the client or his/her legal or responsible representative within five business days of notification of discharge. Upon the death of a client, any remaining funds shall be refunded to the client's legal or responsible representative within five business days of the client's death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6255. Quality Improvement Plan**

A. A TGH provider shall have a quality improvement (QI) plan which puts systems in place to effectively identify

issues for which quality monitoring, remediation, and improvement activities are necessary. The QI plan shall include plans of action to correct identified issues including monitoring the effect of implemented changes and making needed revisions to the action plan.

B. The QI plan shall include:

1. a process for obtaining input annually from the client/guardian/authorized representatives and family members, as applicable. This process shall include, but not be limited to:

- a. satisfaction surveys done by mail or telephone;
- b. focus groups; and
- c. other processes for receiving input regarding the quality of services received;

2. a 10 percent sample review of client case records on a quarterly bases to assure that:

- a. individual treatment plans are up to date;
- b. records are complete and current; and
- c. the treatment plans have been developed and implemented as ordered.

3. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or the clients of the TGH receiving services which includes, but is not limited to:

- a. review and resolution of complaints;
- b. review and resolution of incidents; and
- c. incidents of abuse, neglect and exploitation;

4. a process to review and resolve individual client issues that are identified; and

5. a process to review and develop action plans to resolve all system wide issues identified as a result of the processes above.

C. The QI program outcomes shall be documented and reported to the supervising practitioner for action, as necessary, for any identified systemic problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **Subchapter E. Admission, Transfer, and Discharge** **§6259. Admission Requirements**

A. A TGH shall have written admissions policies and criteria which shall include the following:

1. intake policy and procedures;
2. admission criteria and procedures;
3. policy regarding the determination of legal status, according to appropriate state laws, before admission;
4. the age of the populations served;
5. the services provided by the TGH; and
6. criteria for discharge.

B. The written description of admissions policies and criteria shall be provided to the department upon request, and made available to the client and his/her legal representative.

C. A TGH shall not refuse admission to any client on the grounds of race, national origin, ethnicity or disability.

D. A TGH shall admit only those clients whose needs, pursuant to the pretreatment assessment and comprehensive treatment plan, can be fully met by the TGH.

E. When refusing admission to a client, the TGH shall provide a written statement to the client with the reason for the refusal. This shall be provided to the designated representative(s) of the department upon request.

F. Pretreatment Assessment. To be admitted into a TGH, the individual must have received a pretreatment assessment by the Medicaid Program, or its designee, that recommends admission into the TGH. The TGH must ensure that requirements for pretreatment assessment are met prior to treatment commencing. The referral PTA shall contain clinical information to support medical necessity to the therapeutic group home and to establish that TGH is the most appropriate service to meet the client's treatment needs.

G. The TGH shall use the pretreatment assessment to develop an initial plan of care to be used upon admission until a comprehensive treatment plan is completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6261. Transfer and Discharge Requirements**

A. The goal of the therapeutic group home is to return the client to a less restrictive level of service as early as possible in the development of the plan.

B. Discharge planning begins at the date of admission, and goals toward discharge shall be continually addressed in the multi-disciplinary team meetings and when the comprehensive treatment plan is reviewed. Discharge may be determined based on the client no longer making adequate improvement in this facility (and another facility being recommended) or the client no longer having medical necessity at this level of care.

C. Continued TGH stay should be based on a clinical expectation that continued treatment in the TGH can reasonably be expected to achieve treatment goals and improve or stabilize the client's behavior, such that this level of care will no longer be needed and the client can return to the community.

D. Transition should occur to a more appropriate level of care if the client is not making progress toward treatment goals and there is no reasonable expectation of progress at this level of care (e.g., client's behavior and/or safety needs requires a more restrictive level of care or, alternatively, client's behavior is linked to family functioning and can be better addressed through a family/home-based treatment).

E. Voluntary Transfer or Discharge. Upon notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services, the TGH shall have the responsibility of planning for a client's voluntary transfer or discharge.

1. The transfer or discharge responsibilities of the TGH shall include:

a. holding a transfer or discharge planning conference with the client, family, support coordinator, legal representative and advocate, if such are known, in order to facilitate a smooth transfer or discharge, unless the client declines such a meeting;

b. providing a current comprehensive treatment plan. Upon written request and authorization by the client or authorized representative, a copy of the current comprehensive treatment plan shall be provided to the client or receiving provider;

c. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, developmental issues, behavioral issues, social issues, and nutritional status of the client. Upon written request and authorization by the client or authorized

representative, a copy of the discharge summary shall be disclosed to the client or receiving provider. The written discharge summary shall be completed within five working days of the notice by the client or authorized representative that the client has selected another provider or has decided to discontinue services. The provider's preparation of the discharge summary shall not impede or impair the client's right to be transferred or discharged immediately if the client so chooses; and

d. not coercing or interfering with the client's decision to transfer. Failure to cooperate with the client's decision to transfer to another provider will result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **Subchapter F. Services**

##### **§6265. General Provisions**

A. Upon admission, the TGH must conduct an Initial Diagnostic Interview. A nursing assessment shall be completed by a Registered Nurse within 24 hours of admission.

B. The TGH shall develop and implement an initial plan of care after completion of the initial diagnostic interview and utilizing the information contained in the pretreatment assessment to implement care for the client up to and until the comprehensive treatment plan is developed.

C. The TGH shall ensure that requirements for pretreatment assessment are met prior to treatment commencing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

##### **§6267. Comprehensive Treatment Plan**

A. Within seven days of admission, a comprehensive treatment plan shall be developed by the established multidisciplinary team of staff providing services for the client. Each treatment team member shall sign and indicate their attendance and involvement in the treatment team meeting. The treatment team review shall be directed and supervised by the supervising practitioner at a minimum of every 14 days.

B. The multi-disciplinary team shall be made up of at least the supervising practitioner, clinical director, registered nurse, and therapist. The client and the client's guardian/family shall be included as treatment planning members in the development of the comprehensive treatment plan and in the update of treatment goals.

C. In the event the supervising practitioner is not present at a treatment team meeting during a review of a comprehensive treatment plan, the supervising practitioner must review and sign the comprehensive treatment plan within 10 calendar days following the meeting.

D. The provider must have an original completed, dated and signed team meeting document with signatures of all who attended as well as evidence of invitations extended to the meeting, such as copies of letters, emails or service logs.

E. The multi-disciplinary team shall identify any barriers to treatment and modify the plan in order to continue to facilitate active movement toward the time-limited treatment goals identified in the plan.

F. The TGH shall use a standardized assessment and treatment planning tool such as the *Child and Adolescent Needs and Strengths* (CANS).

G. Each client's treatment plan shall identify individualized strength-based services and supports. The individualized, strengths-based services and supports:

1. are identified in partnership with the client and his or her family and support system to the fullest possible extent and if developmentally appropriate;

2. are based on both clinical and functional assessments;

3. are clinically monitored and coordinated, with 24-hour availability;

4. are implemented with oversight from a licensed mental health professional; and

5. assist with the development of skills for daily living and support success in community settings, including home and school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

##### **§6269. Client Services**

A. The TGH shall ensure services in the following areas to meet the specialized needs of the client:

1. psychological and psychiatric services;

2. physical and occupational therapy;

3. speech pathology and audiology; and

4. other medical and dental services as needed.

B. The TGH is required to provide at least 21 hours of active treatment per week to each client. This treatment must be provided by qualified staff.

C. The TGH shall have a written plan for insuring that a range of daily indoor and outdoor recreational and leisure opportunities are provided for clients. Such opportunities shall be based on both the individual interests and needs of the client and the composition of the living group. Recreational activities are not considered a part of the 21 required treatment hours.

1. The provider shall be adequately staffed and have appropriate recreation spaces and facilities accessible to clients.

2. Any restrictions of recreational and leisure opportunities shall be specifically described in the treatment plan, together with the reasons such restrictions are necessary and the extent and duration of such restrictions.

D. The TGH shall have a program to ensure that clients receive training in independent living skills appropriate to their age and functioning level. This program shall include instruction in:

1. hygiene and grooming;

2. laundry and maintenance of clothing;

3. appropriate social skills;

4. housekeeping;

5. budgeting and shopping;

6. cooking; and

7. punctuality, attendance, and other employment related matters.

E. The TGH shall have a written description regarding the involvement of the client in work including:

1. the description of any unpaid tasks required of the client;

2. the description of any paid work assignments including the pay scales for such assignments;

3. the description of the provider's approach to supervising work assignments;

4. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws; and

5. all work assignments shall be in accordance with the client's treatment plan.

F. The provider shall assign as unpaid work for the client only housekeeping tasks similar to those performed in a normal family home. Any other work assigned shall be compensated at a rate and under such conditions as the client might reasonably be expected to receive for similar work in outside employment.

G. When a client engages in off-grounds work, the provider shall maintain written documentation that:

1. such work is voluntary and in accordance with the client's treatment plan;

2. the clinical director approves such work;

3. such work is supervised by qualified personnel; and

4. the conditions and compensation of such work are in compliance with applicable state and federal laws;

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§6271. Medications**

A. All TGHs that store and/or dispense scheduled narcotics shall have a site-specific Louisiana controlled substance license and a United States Drug Enforcement Administration (DEA) controlled substance registration for the facility in accordance with the Louisiana Uniform Controlled Dangerous Substance Act and Title 21 of the *United States Code*.

B. The facility shall have written policies and procedures that govern the safe administration and handling of all prescription and nonprescription medications.

C. The provider shall have a written policy governing the self-administration of all medications. Such policy shall include provisions regarding age limitations for self-administration, multi-disciplinary team recommendations, and parental consent, if applicable. Those clients that have been assessed to be able to safely self-administer medications shall be monitored by qualified staff to ensure medication is taken as prescribed in the comprehensive treatment plan.

D. The provider shall ensure that medications are either self-administered or administered by qualified persons according to state law.

E. The provider shall have a written policy for handling medication taken from the facility by clients on pass.

F. The provider shall ensure that any medication given to a client for therapeutic and medical purposes is in accordance with the written order of a physician.

1. There shall be no standing orders for prescription medications.

2. There shall be standing orders, signed by the physician, for nonprescription drugs with directions from the physician indicating when he/she is to be contacted. Standing orders shall be updated annually by the physician.

3. Copies of all written orders shall be kept in the client's file.

G. The TGH shall develop and implement procedures for all discontinued and/or expired medications and containers with worn, illegible or missing labels.

H. All medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

1. Medications used externally and medications taken internally shall be stored on separate shelves or in separate cabinets.

2. All medications, including those that are refrigerated, shall be kept under lock and key.

I. Any TGH using psychotropic medications shall have written policies and procedures concerning the use of psychotropic medications including:

1. when used, there is medical monitoring to identify specific target symptoms;

2. procedures to ensure that medications are used as ordered by the physician for therapeutic purposes and in accordance with accepted clinical practice;

3. procedures to ensure that medications are used only when there are demonstrable benefits to the client unobtainable through less restrictive measures;

4. procedures to ensure continual physician review of medications and discontinuation of medications when there are no demonstrable benefits to the client;

5. an ongoing program to inform clients, staff, and where appropriate, client's parent(s) or legal guardian(s) on the potential benefits and negative side-effects of medications and to involve clients and, where appropriate, their parent(s) or legal guardian(s) in decisions concerning medication; and

6. training of staff to ensure the recognition of the potential side effects of the medication.

J. Current and accurate records shall be maintained on the receipt and disposition of all scheduled drugs. An annual inventory, at the same time each year, shall be conducted for all Schedule I, II, III, IV and V drugs.

K. Medications are to be administered only upon written orders, electromechanical facsimile, or oral orders from a physician or other legally authorized prescriber, taken by a licensed nurse.

L. All drug containers shall be labeled to show at least the client's full name, the chemical or generic drug's name, strength, quantity and date dispensed unless a unit dose system is utilized. Appropriate accessory and cautionary statements as well as the expiration date shall be included.

M. Medications and biologicals that require refrigeration shall be stored separately from food, beverages, blood, and laboratory specimens.

N. Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician. An entry shall be made in the client's record.

O. Abuses and losses of controlled substances shall be reported to the individual responsible for pharmaceutical services, the clinical director, the Louisiana Board of Pharmacy, DHH Controlled Dangerous Substances Program and to the Regional Drug Enforcement Administration (DEA) office, as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:



### §6273. Food and Diet

A. The TGH shall ensure that all dietary services are provided in consultation with a Louisiana licensed registered dietician. The registered dietician shall be available regarding the nutritional needs, the special diets of individual clients and to assist in the development of policies and procedures for the handling, serving and storage of food.

B. The provider shall have written policies and procedures that ensure that a client is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council and doesn't deny any rights of the client.

C. Meals, whether prepared by the facility or contracted from an outside source, shall meet the following conditions:

1. menus shall be written in advance, shall provide for a variety of nutritional foods and shall be reviewed and approved by a licensed registered dietician;

2. records of menus, as served, shall be filed and maintained for at least 30 days;

3. modified diets shall be prescribed by a physician;

4. food preparation areas and utensils shall be maintained in accordance with state and local sanitation and safe food handling standards. Pets are not allowed in food preparation and serving areas; and

5. the clinical director or house manager shall designate one staff member who shall be responsible for meal preparation/serving if meals are prepared in the facility.

D. Drinking water shall be readily available.

E. Dining areas shall be adequately equipped with tables, chairs, eating utensils and dishes designed to meet the functional needs of clients.

F. All food shall be procured, stored, prepared, distributed, and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink according to State Sanitary Code. Refrigerator temperatures shall be maintained according to State Sanitary Code. Hot foods shall leave the kitchen or steam table according to State Sanitary Code.

G. The provider shall ensure that any prescribed modified diet for a client shall be implemented and planned, prepared and served by persons who have received instruction from the registered dietician who has approved the menu for the modified diet.

H. The provider shall ensure that a client is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast on the following day. Specific times for serving meals shall be established and posted.

I. Bedtime nourishments shall be offered nightly to all clients, unless contraindicated by the client's medical practitioner, as documented in the client's comprehensive treatment plan.

J. The provider shall ensure that the food provided to a client in care of the provider is in accordance with his/her religious beliefs.

K. No client shall be denied food or force-fed for any reason except as medically required pursuant to a physician's written order. A copy of the order shall be maintained in the client's file.

L. When meals are provided to staff, the provider shall ensure that staff members eat the same food served to clients in care, unless special dietary requirements dictate differences in diet.

M. The provider shall ensure that food served to a client that is not consumed is discarded.

N. Written reports of inspections by the Office of Public Health shall be posted in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### §6275. Transportation

A. A TGH provider shall arrange for or provide transportation necessary for implementing the client's treatment plan.

B. Any vehicle used to transport clients, whether such vehicle is operated by a staff member or any other person acting on behalf of the facility, shall be:

1. properly licensed and inspected in accordance with state law;

2. maintained in a safe condition;

3. operated at a temperature that does not compromise the health, safety or needs of the client; and

4. operated in conformity with all of the applicable motor vehicle laws.

C. The facility shall have documentation of current liability insurance coverage for all owned and non-owned vehicles used to transport clients. The personal liability insurance of a facility's employee shall not be substituted for the required coverage.

D. Any staff member of the facility, or other person acting on behalf of the facility, who is operating a vehicle for the purpose of transporting clients shall be properly licensed to operate that class of vehicle in accordance with state law.

E. Upon hire, the facility shall conduct a driving history record of each employee, and annually thereafter.

F. The facility shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats with seatbelts in the vehicle.

G. The facility shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. This information shall be communicated to agency staff responsible for transporting clients.

H. The following additional arrangements are required for transporting non-ambulatory clients and those who cannot otherwise be transferred to and from the vehicle.

1. A ramp device to permit entry and exit of a client from the vehicle shall be provided for vehicles. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. Wheelchairs used in transit shall be securely fastened inside the vehicle utilizing approved wheelchair fasteners.

3. The arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Subchapter G. Client Protections**

### **§6279. Client Rights**

A. A TGH must develop and implement policies to protect its client's rights and to respond to questions and grievances pertaining to these rights. A TGH and its staff shall not violate a client's rights.

B. A client shall be granted at least the following rights:

1. the right to be informed of the client's rights and responsibilities in advance of furnishing or discontinuing client care;

2. the right to have a family member, chosen representative and/or his or her own physician notified promptly of admission to the TGH;

3. the right to receive treatment and medical services without discrimination based on race, age, religion, national origin, sex, sexual preferences, handicap, diagnosis, ability to pay or source of payment;

4. the right to be treated with consideration, respect and recognition of their individuality, including the need for privacy in treatment;

5. the right to receive, as soon as possible, the services of a translator or interpreter, if needed, to facilitate communication between the client and the TGH's health care personnel;

6. the right to participate in the development and implementation of his/her treatment plan;

7. the right to make informed decisions regarding his/her care by the client or in the case of a minor, the client's parent, guardian or responsible party, whichever is applicable in accordance with appropriate laws and regulations;

8. the right to be informed of his/her health status, and be involved in care planning and treatment;

9. the right to be included in experimental research only when he/she gives informed, written consent to such participation, or when a guardian provides such consent for an incompetent client or a minor client in accordance with appropriate laws and regulations. The client may refuse to participate in experimental research, including the investigations of new drugs and medical devices;

10. the right to be informed by the attending physician and other providers of health care services about any continuing health care requirements after the client's discharge from the TGH. The client shall also have the right to receive assistance from the physician and appropriate TGH staff in arranging for required follow-up care after discharge;

11. the right to consult and communicate freely and privately with his/her parent(s) or legal guardian(s), if permitted in the comprehensive treatment plan;

12. the right to consult freely and privately with legal counsel;

13. the right to make complaints without fear of reprisal;

14. the right to communicate via a telephone, as allowed by the comprehensive treatment plan;

15. the right to send and receive mail as allowed by the comprehensive treatment plan;

16. the right to possess and use personal money and belongings, including personal clothing, subject to rules and restrictions imposed by the TGH;

17. the right to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the client's treatment plan. The reasons for any special restrictions shall be recorded in the client's treatment plan;

18. the right to have the individual client's medical records, including all computerized medical information, kept confidential;

19. the right to access information contained in his/her medical records within a reasonable time frame, subject to restrictions imposed in the comprehensive treatment plan;

20. the right to be free from all forms of abuse and harassment;

21. the right to receive care in a safe setting;

22. the right to be informed in writing about the TGH's policies and procedures for initiation, review and resolution of client complaints;

23. the right to have access to appropriate educational services consistent with the client's abilities and needs, taking into account his/her age and level of functioning;

24. the right to indoor and outdoor recreational and leisure opportunities;

25. the right to attend religious services in accordance with his/her faith. Clients shall not be forced to attend religious services; and

26. the right to choose a provider, the right to be discharged from his current provider and be transferred to another provider, and the right to discontinue services altogether unless prohibited by court order.

C. In addition to the rights listed herein, clients have the rights provided in the Louisiana Mental Health Law and the Louisiana Children's Code.

D. A TGH shall provide a copy of the client's rights to each client upon admission and shall have documentation of each client who received a copy of them.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6281. Grievances**

A. The provider shall have a written grievance procedure for clients designed to allow clients to make complaints without fear of retaliation. The procedure shall include, but not be limited to:

1. a time line for responding to grievances;

2. a method of responding to grievances;

3. a procedure for filing a grievance; and

4. staff responsibilities for handling grievances.

B. The provider shall have documentation reflecting that the client and the client's parent(s) or legal guardian(s) are aware of and understand the grievance procedure.

C. The provider shall have documentation reflecting the resolution of the grievance in the client's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Subchapter H. Physical Environment**

### **§6285. General Provisions**

A. Location of Therapeutic Group Homes. To ensure a more home-like setting, the TGH shall be located in a residential community to facilitate community integration

through public education, recreation, and maintenance of family connections. The setting must be geographically situated to allow ongoing participation of the child's family. The child or adolescent must attend a school in the community (e.g., a school integrated with children not from the institution and not on the institution's campus). In this setting, the child or adolescent remains involved in community-based activities and may attend a community educational, vocational program or other treatment setting.

B. The living setting shall more closely resemble normal family existence than would be possible in a larger facility or institution.

C. Providers shall develop an environment conducive to the client safely restoring previous levels of functioning and enhancing existing levels of functioning. In addition the provider shall maintain a community-based non-institutional environment.

D. The TGH shall have an effective pest control plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6287. Interior Space**

A. The arrangement, appearance and furnishing of all interior areas of a TGH shall be similar to those of a normal family home within the community.

B. The provider shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the home.

C. A home shall have a minimum of 60 square feet of floor area per client in living areas accessible to the clients and excluding halls, closets, bathrooms, bedrooms, staff or staff's family quarters, laundry areas, storage areas and office areas.

#### **D. Client Bed Rooms**

1. Single rooms must contain at least 80 square feet and multi-bed rooms shall contain at least 50 square feet per bed, exclusive of fixed cabinets, fixtures, and equipment. Rooms shall have at least a 7 1/2 foot ceiling height over the required area. In a room with varying ceiling height, only portions of the room with a ceiling height of at least 7 1/2 feet are allowed in determining usable space.

2. Any client bedrooms shall not contain more than two beds.

a. Exception. If a child residential facility currently licensed by DCFS is converting to a TGH and has more than two clients per bedroom, then the converted TGH may have bedroom space that allows no more than four clients per designated bedroom.

3. There shall be at least three feet between beds.

4. There shall be sufficient and satisfactory separate storage space for clothing, toilet articles and other personal belongings of clients.

5. There shall be a door for privacy to each individual bedroom. The doors shall not be equipped with locks or any other device that would prohibit the door from being opened from either side.

6. There shall be a functional window in each bedroom.

7. The provider shall ensure that sheets, pillow, bedspread and blankets are provided for each client.

8. Each client shall have his/her own dresser or other adequate storage space for private use and designated space for hanging clothing in proximity to the bedroom occupied by the client.

9. No client over the age of five years shall occupy a bedroom with a member of the opposite sex.

10. The provider shall ensure that the age of client sharing bedroom space is not greater than four years in difference unless contraindicated based on diagnosis, the treatment plan or the behavioral health assessment of the client.

11. Each client shall have his/her own bed. A client's bed shall be longer than the client is tall, no less than 30 inches wide, of solid construction and shall have a clean, comfortable, nontoxic fire retardant mattress.

#### **E. Dining Areas**

1. The facility shall have dining areas that permit clients, staff and guests to eat together in small groups.

2. A facility shall have dining areas that are clean, well lit, ventilated and attractively furnished.

#### **F. Bathrooms**

1. A facility shall have wash basins with hot and cold water, flush toilets, and bath or shower facilities with hot and cold water according to client care needs. Plumbing fixtures delivering hot water shall be protected by an approved scald control mechanism at the fixture.

2. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless clients are individually given such items. Clients shall be provided individual items such as hair brushes and toothbrushes.

3. Tubs and showers shall have slip proof surfaces.

4. A facility shall have toilets and baths or showers that allow for individual privacy unless the clients in care require assistance.

5. Toilets, wash basins and other plumbing or sanitary facilities in a facility shall, at all times, be maintained in good operating condition and shall be kept free of any materials that might clog or otherwise impair their operation.

6. A TGH shall have at least one separate toilet, lavatory, and bathing facility for the staff.

7. In a multi-level home, there shall be at least one toilet bowl with accessories, lavatory basin and bathing facility reserved for client use on each client floor.

8. The TGH shall meet the following ratios:

- a. one lavatory per six clients;
- b. one toilet per six clients; and
- c. one shower or tub per six clients.

9. Bathrooms shall contain shatterproof mirrors secured to the walls at convenient heights and other furnishings necessary to meet the clients' basic hygienic needs.

#### **G. Kitchens**

1. Kitchens used for meal preparations shall have the equipment necessary for the preparation, serving, storage and clean up of all meals regularly served to all of the clients and staff. If clients prepare meals, additional equipment and space is required. All equipment shall be maintained in proper working order.

2. The provider shall ensure that all dishes, cups and glasses used by clients are free from chips, cracks or other

defects and are in sufficient number to accommodate all clients.

3. There shall be trash containers in the kitchen and dining area. Trash containers in kitchens and dining area shall be covered.

H. Laundry. The provider shall have a laundry space complete with washer and dryer.

I. Staff Quarters. The provider utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff.

J. Administrative and Counseling Area

1. The provider shall provide a space that is distinct from client's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. The provider shall have a designated space to allow private discussions and counseling sessions between individual clients and staff, excluding, bedrooms and common living areas.

K. Furnishings

1. The provider shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of clients shall be appropriately designed to suit the size and capabilities of the clients.

2. The provider shall promptly replace or repair broken, run-down or defective furnishings and equipment.

L. Doors and Windows

1. The provider shall provide insect screens for all windows that can be opened. The screens shall be in good repair and readily removable in emergencies.

2. The provider shall ensure that all closets, bedrooms and bathrooms are equipped with doors that can be readily opened from both sides.

3. Windows or vents shall be arranged and located so that they can be opened from the inside to permit venting of combustion products and to permit occupants direct access to fresh air in emergencies. The operation of windows shall be restricted to inhibit possible escape or suicide. If the home has an approved engineered smoke control system, the windows may be fixed. Where glass fragments pose a hazard to certain clients, safety glazing and/or other appropriate security features shall be used. The windows shall be covered for privacy, and the coverings shall pose no safety hazard for the clients living in the home.

M. Storage

1. The provider shall ensure that there are sufficient and appropriate storage facilities.

2. The provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

N. Electrical Systems

1. The provider shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and in safe condition.

2. The provider shall ensure that any room, corridor or stairway within a facility shall be well lit.

O. Heating, Ventilation and Air Conditioning

1. The provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of all clients.

2. The provider shall not use open flame heating equipment or portable electrical heaters.

3. All gas heating units and water heaters must be vented adequately to carry the products of combustion to the outside atmosphere. Vents must be constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with the recommended procedures of the American Gas Association Testing Laboratories, Inc.

4. All heating units must be provided with a sufficient supply of outside air so as to support combustion without depletion of the air in the occupied room.

P. Smoking shall be prohibited in all areas of the TGH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6289. Exterior Space Requirements**

A. The provider shall maintain all areas of the facility that are accessible to the clients in good repair and free from any reasonably foreseeable hazard to health or safety. All structures on the grounds of the facility shall be maintained in good repair.

1. Garbage and rubbish stored outside shall be secured in noncombustible, covered containers and shall be removed on a regular basis.

2. Trash collection receptacles and incinerators shall be separate from recreation/play areas and located as to avoid being a nuisance.

3. Clients shall have access to safe, suitable outdoor recreational space and age appropriate equipment. Recreation/playground equipment shall be so located, installed and maintained as to ensure the safety of the clients.

4. Areas determined unsafe, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced or have natural barriers to protect clients.

5. Fences that are in place shall be in good repair.

6. The provider shall ensure that exterior areas are well lit at night.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

### **§6291. Equipment**

A. Equipment shall be clean and in good repair for the safety and well-being of the clients.

B. Therapeutic, diagnostic and other client care equipment shall be maintained and serviced in accordance with the manufacturer's recommendations.

C. Methods for cleaning, sanitizing, handling and storing of all supplies and equipment shall be such as to prevent the transmission of infection.

D. After discharge of a client, the bed, mattress, cover, bedside furniture and equipment shall be properly cleaned. Mattresses, blankets and pillows assigned to clients shall be in a sanitary condition. The mattress, blankets and pillows used for a client with an infection shall be sanitized in an acceptable manner before they are assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

## **Subchapter I. Facility Operations**

### **§6293. Safety and Emergency Preparedness**

#### **A. General Safety Practices**

1. A provider shall not maintain any firearms or chemical weapons at any time.

2. A facility shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers and labeled as to the contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff and visitors.

3. Adequate supervision/training shall be provided where potentially harmful materials such as cleaning solvents and/or detergents are used.

4. A facility shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

5. Medication shall be locked in a secure storage area or cabinet.

6. Fire drills shall be performed at least once a month.

#### **B. Emergency Preparedness**

1. A disaster or emergency may be a local, community-wide, regional or statewide event. Disasters or emergencies may include, but are not limited to:

- a. tornados;
- b. fires;
- c. floods;
- d. hurricanes;
- e. power outages;
- f. chemical spills;
- g. biohazards;
- h. train wrecks; or
- i. declared health crisis.

2. Continuity of Operations. The provider shall have a written emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the provider's ability to render care and treatment, or threatens the lives or safety of the clients.

3. The provider shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency. The plan shall include, at a minimum:

- a. provisions for the evacuation of each client, delivery of essential services to each client, whether the client is in a shelter or other location;
- b. provisions for the management of staff, including provisions for adequate, qualified staff as well as for distribution and assignment of responsibilities and functions;
- c. provisions for back-up staff;
- d. the method that the provider will utilize in notifying the client's family or caregiver if the client is evacuated to another location either by the provider or with the assistance or knowledge of the provider. This notification shall include:

- i. the date and approximate time that the facility or client is evacuating;

- ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and

- iii. a telephone number that the family or responsible representative may call for information regarding the provider's evacuation;

- e. provisions for ensuring that supplies, medications, clothing and a copy of the service plan are sent with the client, if the client is evacuated; and

- f. the procedure or methods that will be used to ensure that identification accompanies the client. The identification shall include the following information:

- i. current and active diagnosis;
    - ii. medication, including dosage and times administered;

- iii. allergies;

- iv. special dietary needs or restrictions; and

- v. next of kin, including contact information.

4. If the state, parish or local Office of Homeland Security and Emergency Preparedness (OHSEP) orders a mandatory evacuation of the parish or the area in which the agency is serving, the agency shall ensure that all clients are evacuated according to the agency's emergency preparedness plan.

5. The provider shall not abandon a client during a disaster or emergency. The provider shall not evacuate a client to a shelter without ensuring staff and supplies remain with the client at the shelter, in accordance with the client's treatment plan.

6. Emergency Plan Review and Summary. The provider shall review and update its emergency preparedness plan at least annually.

7. The provider shall cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested.

8. The provider shall monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials.

9. All TGH employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

10. Upon request by the department, the TGH shall submit a copy of its emergency preparedness plan and a written summary attesting how the plan was followed and executed. The summary shall contain, at a minimum:

- a. pertinent plan provisions and how the plan was followed and executed;
- b. plan provisions that were not followed;
- c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
- d. contingency arrangements made for those plan provisions not followed; and
- e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§6295. Inactivation of License due to a Declared Disaster or Emergency**

A. A TGH licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

1. the licensed provider shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the TGH has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the licensed TGH intends to resume operation as a TGH in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another provider; and

e. provides a list of clients and the location of the discharged or transferred clients;

2. the licensed TGH resumes operating as a TGH provider in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the licensed TGH continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

4. the licensed TGH continues to submit required documentation and information to the department.

B. Upon receiving a completed written request to inactivate a TGH license, the department shall issue a notice of inactivation of license to the TGH provider.

C. Upon completion of repairs, renovations, rebuilding or replacement, a TGH which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met.

1. The TGH shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening.

a. The license reinstatement request shall inform the department of the anticipated date of opening, and shall request scheduling of a licensing survey.

b. The license reinstatement request shall include a completed licensing application with appropriate licensing fees.

2. The provider resumes operating as a TGH in the same service area within one year.

D. Upon receiving a completed written request to reinstate a TGH license, the department shall conduct a licensing survey. If the TGH meets the requirements for licensure and the requirements under this Section, the

department shall issue a notice of reinstatement of the TGH license.

1. The licensed capacity of the reinstated license shall not exceed the licensed capacity of the TGH at the time of the request to inactivate the license.

E. No change of ownership in the TGH shall occur until such TGH has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as a TGH provider.

F. The provisions of this Section shall not apply to a TGH which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the TGH license and any applicable facility need review approval for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**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. This proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972. It is anticipated that this proposed Rule will promote the health and welfare of eligible recipients by ensuring their access to appropriate therapeutic residential intervention services.

**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, December 28, 2011 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.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Therapeutic Group Homes  
Minimum Licensing Standards**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$10,332 (SGF) will be expended in FY 11-12 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 increase revenue collections to the Department by

approximately \$3,000 for FY 11-12, \$3,000 for FY 12-13, and \$3,000 for FY 13-14 as a result of the collection of annual fees from the licensing of therapeutic group homes (TGHs).

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

This rule proposes to adopt provisions governing the minimum licensing standards for therapeutic group homes in order to prepare for the transition to a comprehensive system of delivery for behavioral health services in the state (anticipate approximately 5 facilities). It is anticipated that implementation of this proposed rule will have economic costs to therapeutic group homes of approximately \$600 annually, and will benefit all TGH facilities by providing licensing requirements for operation in the state of Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory  
Medicaid Director  
1111#068

H. Gordon Monk  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Corrections Services**

Louisiana Sex Offender Assessment Panels (LAC 22:I.109)

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 Section 109, Louisiana Sex Offender Assessment Panels.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 1. Secretary's Office**

**§109. Louisiana Sex Offender Assessment Panels**

A. Purpose—to facilitate the identification and management of those offenders who may be sexually violent predators and/or child sexual predators and to develop written policy and procedures for the sex offender assessment panels consistent with statutory requirements, public safety and administrative efficiency. The provisions of this regulation shall apply to all sex offenders and child predators in accordance with Act no. 205 of the 2009 Regular Session who are released by any means from the department's custody on or after August 15, 2006.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens, director of probation and parole, chairman of the board of pardons, chairman of the board of parole 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 to identify those offenders who meet the statutory requirements of a sexually violent predator and/or child sexual predator through the sex offender assessment Panel (SOAP) review process. The panels shall evaluate all sex offenders and child predators in

accordance with the provisions of this regulation prior to their release from incarceration.

**D. Definitions**

*Child Predator*—a person who has been convicted of a criminal offense against a victim who is a minor as defined in R.S. 15:541(12).

*Child Sexual Predator*—a judicial determination as provided for in R.S. 15:560 et seq., for an offender who has been convicted of an offense as defined in R.S. 15:541(12) and/or (24) and who is likely to engage in additional sex offenses against children because he has a mental abnormality or condition which can be verified, or because he has a history of committing crimes, wrongs, or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children.

*Court*—the judicial district court where the offender was sentenced for the instant offense.

*Criminal Offense Against a Victim Who is a Minor*—a conviction for the perpetration or attempted perpetration, or conspiracy to commit an offense outlined in R.S. 15:541(12). Persons convicted of any of these offenses are considered *child predators* (see definition in this Subsection).

*Judicial Determination*—a decision by the court that an offender is or continues to be a child sexual predator or a sexually violent predator.

*Mental Abnormality*—a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others. Nothing in this definition is intended to supersede or apply to the definitions found in R.S. 14:10 or 14 in reference to criminal intent or insanity.

*Regional Facility*—a state correctional facility located within one of nine regions of the state, as designated by the secretary. Each warden of a regional facility shall be responsible for certain requirements pursuant to the provisions of this regulation for offenders housed in their state correctional facility, as well as DPSC offenders housed in local jail facilities within their respective region.

*Sex Offender*—an offender committed to the custody of the Department of Public Safety and Corrections for a crime enumerated in R.S. 15:541(24). A conviction for any offense provided in this definition includes a conviction for the offense under the laws of another state, or military, territorial, foreign, tribal or federal law equivalent to such offense. An individual convicted of the attempt or conspiracy to commit any of the defined sex offenses shall be considered a sex offender for the purposes of this regulation.

*Sexually Violent Predator*—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of an offense as defined in R.S. 15:541(12) and/or (25) and who has a mental abnormality or anti-social personality disorder that makes the person likely to engage in predatory sexually violent offenses.

**E. Panel Composition and Guidelines**

1. A total of three sex offender assessment panels are hereby created within the Department of Public Safety and Corrections. An executive management officer within the secretary's office shall serve as the administrator for all

panels. Three executive staff officers, employees of the department (one for each of the three panels), shall serve as coordinator for an assigned panel. Each panel shall consist of three members as follows.

a. One member shall be the secretary or designee who shall be chairman.

b. One member shall be a psychologist licensed by the Louisiana State Board of Examiners of Psychologists who has been engaged in the practice of clinical or counseling psychology for not less than three consecutive years who is employed by the Department of Public Safety and Corrections or the Department of Health and Hospitals or a physician in the employ of the Department of Public Safety and Corrections or the Department of Health and Hospitals or under contract to the Department of Public Safety and Corrections whose credentials and experience are compatible with the evaluation of the potential threat to public safety that may be posed by a child sexual predator or a sexually violent predator.

i. Note—if the psychologist or physician is an employee of the Department of Health and Hospitals, the secretary of both departments shall consult and jointly select the member.

c. The warden (or deputy) at the state facility where the offender is housed or the warden (or deputy) of the regional facility for offenders housed in local jail facilities, or a probation and parole officer with a minimum of ten years experience or a retired law enforcement officer with at least five years of experience in investigating sex offenses may serve as the third panel member at the discretion of the secretary.

2. A majority of the members of each panel shall constitute a quorum. All official actions of a panel shall require an affirmative vote of a majority of the members of the panel.

3. Each panel shall meet at least once quarterly and upon the call of the chairman or upon the request of any two members.

4. Notwithstanding the provisions of R.S. 15:574.12, each panel shall review presentence reports, prison records, medical and psychological records, information and other data gathered by the staff of the division of probation and parole, the district attorney from the judicial district which prosecuted the case and information provided by or obtained from the victim(s) and the offender (which may include a personal interview), and any other information obtained by the department.

5. Panels shall have the duty to evaluate every offender who is currently serving a sentence for a conviction of a sex offense and/or child predator who is to be released from the custody of the department or a local jail facility, by any means, to determine if the offender may be a child sexual predator and/or a sexually violent predator in accordance with the provisions of R.S. 15:560 et seq.

#### F. Procedures

1. Each panel shall evaluate every offender currently serving a sentence for a conviction of a sex offense and/or child predator as stated in Paragraph E.5 of this Section and who is required to register pursuant to the provisions of R.S. 15:542 at least six months prior to the release date of the offender.

2. A panel's evaluation shall primarily be conducted by file review of all relevant information available to the department, including the information specified in Paragraph E.4 of this Section. Information and/or recommendations received from individuals other than those employed by the department or the local jail facility where the offender is housed shall be made in writing. Interview, telephone or video conferencing may be conducted at the discretion of the panel.

3. Panel decisions shall be recorded by individual vote. Official results shall be maintained by the respective panel coordinator. Each panel coordinator is responsible for maintaining a separate file on each offender reviewed by the panel.

4. If a panel affirmatively votes that an offender may be a sexually violent predator and/or a child sexual predator, the panel shall forward the determination and the recommendation for such designation to the sentencing court. The recommendation shall include the factual basis upon which the recommendation was based and shall include a copy of all information that was available to the panel during the evaluation process.

5. Upon receiving a recommendation from a panel, the sentencing court will review the recommendation that an offender is a sexually violent predator and/or a child predator.

6. If, after a contradictory hearing the sentencing court finds by clear and convincing evidence and renders a judicial determination that the offender is a sexually violent predator or a child sexual predator, the offender shall be ordered to comply with the following:

a. supervision by the division of probation and parole, upon release from incarceration, for the duration of his natural life;

b. registration as a sex offender in accordance with the provisions of R.S. 15:542 et seq., for the duration of his natural life;

c. provide community notification in accordance with the provisions of R.S. 15:542 et seq., for the duration of his natural life;

d. submit to electronic monitoring pursuant to the provisions of R.S. 15:560.4 for the duration of his natural life; and

e. abide by the supervised release conditions enumerated in R.S. 15:560.3A(4) through (14), which may include treatment for persons convicted of sex offenses when deemed appropriate or ordered to do so by the offender's probation and parole officer as stated in R.S. 15:560.3A(10).

7. If a judicial determination is rendered that an offender is a sexually violent predator or a child sexual predator, the panel administrator shall notify the warden of the state facility where the offender is housed or the warden of the regional facility for offenders housed in local jail facilities of the designation, as well as the division of probation and parole.

8. Upon receipt of notification from the panel administrator, the warden of the state facility where the offender is housed or the warden of the regional facility for offenders housed in local jail facilities shall ensure that the sex offender pre-registration process is initiated in accordance with established procedures.



G. Electronic Monitoring of Child Sexual Predators or Sexually Violent Predators

1. Each offender determined by the court to be a child sexual predator and/or a sexually violent predator pursuant to the provisions of this regulation shall be required to be electronically monitored by the division of probation and parole in a fashion that provides for electronic location tracking.

2. Unless it is determined pursuant to established procedure that an offender is unable to pay all or any portion of the costs for electronic monitoring, each offender to be electronically monitored shall pay the cost of such monitoring.

3. The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

4. Only in the case that an offender determined to be a child sexual predator and/or a sexual violent predator is unable to pay his own electronic monitoring costs, and there are no funds available to the department to pay for such monitoring, may the requirements of electronic monitoring be waived.

H. Notification of Release

1. The office of adult services shall notify the office of state police when a child sexual predator and/or sexually violent predator has been released from imprisonment. The office of state police shall then send out an alert by means of a predator alert system to local law enforcement officials to inform them of such releases.

I. Appeal of Decision

1. An offender determined to be a sexually violent predator and/or a child sexual predator may petition the court for a review of this determination not more than once every three years, provided that the sex offender is currently receiving treatment from a court or treatment provider approved by the department, and good cause for such reconsideration is shown by the offender.

2. If the court grants the petition for review and should the department be notified of the rehearing and the court's decision, the division of probation and parole shall document the case accordingly.

J. Rights of Action

1. Any employee who participates in the Louisiana sex offender assessment panels review process pursuant to this regulation shall be immune from civil or criminal liability when the actions taken are in good faith in a reasonable manner in accordance with generally accepted medical or other professional practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:560 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1631 (August 2008), amended LR 36:534 (March 2010), LR 38:

**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 December 12, 2011.

James M. Le Blanc  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Louisiana Sex Offender  
Assessment Panels**

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 change is a technical adjustment that further clarifies the current regulation regarding the Department's Sex Offender Assessment Panels.

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 rule change.

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 rule change.

Thomas C. Bickham, III  
Undersecretary  
1111#031

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Corrections Services**

**Sex Offender Payment for Electronic Monitoring  
(LAC 22:I.407)**

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 §407 Sex Offender Payment for Electronic Monitoring.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part I. Corrections**

**Chapter 4. Division of Probation and Parole**

**§407. Sex Offender Payment for Electronic  
Monitoring**

A. Purpose—to state the secretary's policy regarding a sex offender's ability to pay for electronic monitoring.

B. Applicability—deputy secretary, undersecretary, chief of operations, regional wardens, wardens and director of probation and parole. 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 to provide for close control and/or tracking of sex offender movement and to

utilize electronic monitoring to achieve this within resource limits.

#### D. Definitions

1. *Child Sexual Predator*—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of a sex offense as defined in R.S. 15:541(12) and/or (24) and who is likely to engage in additional sex offenses against children because he has a mental abnormality or condition which can be verified or because he has a history of committing crimes, wrongs or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children.

2. *Sex Offender*—an offender committed to the custody of the Department of Public Safety and Corrections for a crime enumerated in R.S. 15:541(24). A conviction for any offense provided for in this definition includes a conviction for the offense under the laws of another state, or military, territorial, foreign, tribal, or federal law equivalent to such offense. An individual convicted of the attempt or conspiracy to commit any of the defined sex offenses shall be considered a sex offender for the purpose of this regulation.

3. *Sexually Violent Predator*—a judicial determination as provided for in R.S. 15:560 et seq. for an offender who has been convicted of an offense as defined in R.S. 15:541(12) and/or (24) and who has a mental abnormality or anti-social personality disorder which makes the person likely to engage in predatory sexually violent offenses.

#### E. Procedures

1. Sex offenders shall be placed on electronic monitoring based on the following levels of priority:

a. sex offenders with victims under the age of 13 years pursuant to R.S. 14:43.1(C)(2) and (3), 14:43.2(C)(2) and (3), 14:43.3(C), 14:78.1(D), 14:81.1(D)(1) and (3) and 14:81.2(E);

b. child sexual predators and sexually violent predators based upon a judicial determination made in accordance with established policy and procedures. Pursuant to the provisions of R.S. 15:560.4, these sex offenders shall be required to be electronically monitored utilizing electronic location tracking;

c. Sex offenders under supervision by the division of probation and parole who pose a high level of risk due to indicators such as past and present criminal behavior/arrests, citizen complaints/reports, officer observation and/or other related risk indicators.

2. Each sex offender being electronically monitored shall pay the cost of such monitoring. The cost attributable to the monitoring of a sex offender who has been determined unable to pay shall be borne by the department if, and only to the degree that such funds are made available by appropriation of state funds or from any other source.

a. A sliding scale of payment may be imposed if the offender is unable to pay all (or any portion) of such costs. The division of probation and parole shall determine the offender's ability to pay by considering income to include all earned and unearned income (i.e. benefits, such as unemployment, disability, retirement, real estate) and all assets and basic living expenses and care of dependents, excluding mandated judgments. Factors to be considered may also include public assistance, such as food stamps, Temporary Assistance for Needy Families, Medicaid, public

housing and earnings of less than 200 percent of the federal poverty guideline.

b. Whenever the sex offender cannot fully pay the costs, the determination of ability to pay and amount of payment will be made by the supervising officer with the approval of his supervisor or the district administrator or designee.

c. Failure to comply with established payment responsibilities when it is determined the sex offender had sufficient income shall be deemed a major violation and dealt with according to the division of probation and parole's policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:560.4(B), (C) and (D).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 34:1630 (August 2008), amended LR 38:

#### 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 December 12, 2011.

James M. Le Blanc  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sex Offender Payment for Electronic Monitoring

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

The proposed rule change may result in an increase in state government expenditures. Act 67 of 2011 amended the definitions of sex offenses related to sexual battery and second degree sexual battery to include victims that are physically handicapped, mentally handicapped, and/or over the age of 65. Sex offenders whose victims were physically handicapped, mentally handicapped, and/or over the age of 65 may now be electronically monitored. The state now pays \$3.24 per day (\$3.24 per day x 30 days = \$97.20 per month) to electronically monitor each offender. If an offender is able to pay the full amount of supervision fees, the state pays the difference in monitoring costs of either \$37.20 for probationers (\$97.20 per month - \$60 probation fee = \$37.20) or \$34.20 for parolees (\$97.20 - \$63 parole fee = \$34.20). To the extent a sex offender is unable to pay the full or partial cost of supervision, the state will pay the remainder.

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

The proposed rule change may result in an increase in revenue collections due to convicted sex offenders whose victims were physically handicapped, mentally handicapped, and/or over the age of 65 being placed on probation or parole supervision. Offenders placed on electronic monitoring do not pay an additional fee for electronic monitoring supervision. Any offender placed under electronic monitoring will continue to pay the same monthly supervision fee of \$60 (probationers) or \$63 (parolees). The Division of Probation and Parole determines the amount paid by the defender based on the offender's ability to pay.

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

The proposed rule change may result in a cost to sex offenders whose victims were physically handicapped, mentally handicapped, and/or over the age of 65, since the offender will pay the Department of Corrections a monthly supervision fee of \$60 (probationers) or \$63 (parolees). The Division of Probation and Parole determines the amount paid by the defender based on the offender's ability to pay.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this proposed rule change.

Thomas C. Bickham, III  
Undersecretary  
1111#032

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Registrars of Voters Employees' Retirement System**

**Retirement System Trustees Election Procedures  
(LAC 58:XVII.Chapter 1)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Trustees for the Registrars of Voters Employees' Retirement System has approved for advertisement these rules for the election procedure for the system's board of trustees. The proposed rules are being adopted pursuant to section 2 of La. S.B. 2 Reg. Sess. 2011, Act 119 which provides that the board of trustees shall promulgate rules that govern the election of members of the board. This intended action by the Registrars of Voters Employees' Retirement System complies with statutory law administered by the agency and is promulgated in accordance with that section 2. A preamble to this proposed action has not been prepared.

**Title 58  
RETIREMENT**

**Part XVII. Registrars of Voters Employees' Retirement System**

**Chapter 1. Procedures for Election of Registrars of Voters Employees' Retirement System Trustees**

**§101. General Election Procedures**

A. The director shall issue to the Registrars of Voters Employees' Retirement System membership a notice of each trustee office to be filled between the first Monday in July and the second Friday in July via email, with qualifying form attached and placed on the website, such form to require applicant's name, parish, date started in system, and for which seat the applicant is qualifying.

B. Candidates shall submit in writing to the director their intention to run for a specified office between the third Monday and the fourth Friday of July. The board of trustees shall designate a qualifying form. The designated qualifying form shall be posted on the website and/or mailed to the member.

C. These July dates will differ only for the first year, 2011, in which the notice shall be issued as soon as reasonably possible and the notice shall adjust the time for qualifying only as minimally as possible in order to maintain the remainder of the timetable below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2091(B) and (C) et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Registrars of Voters Employees' Retirement System, LR 38:

**§103. Ballots, Count, Tabulation, Posting, Oath of Office**

A. The director shall compile a ballot for each office to be filled. Ballots shall be mailed to the membership at their home address beginning the first Tuesday through the second Friday of September. The ballots shall be issued to members who were active employees as of June 30 of that year and the member must be an active employee as of the date the system counts the ballot in order for that member's ballot to be counted. In addition to the ballot the director shall mail an affidavit as specified by the board of trustees, a return envelope and instructions. The director shall inform each member in this mailing that results of the vote shall be promulgated on the system's website in late November or early December. Voted ballots shall be accepted through the first Friday in October at 4:30 p.m. A date and time shall be placed on each ballot envelope received by the director across the envelope flap.

B. Ballots shall be held inviolate by the director. The chairman of the board shall call a special meeting to count and tabulate ballots between the first Monday in November and the last Friday in November. At this special meeting the board of trustees shall promulgate the returns and announce the results.

1. The director shall post the results of the promulgation on ROVERS' website. The director shall email each registrar notification of this posting and each registrar shall be required to download and print and post this notice in each of the registrar's offices.

2. The director shall issue to the elected trustee an oath of office. The trustee shall take the oath in the month of December and file a copy with their respective clerk of court. A copy of said oath shall be forwarded to the director. The oath shall contain a term of office effective January 1st of the following year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2091(B) and (C) et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Registrars of Voters Employees' Retirement System, LR 38:

**§105. Vacancy**

A. Should a vacancy occur, the board shall appoint a replacement member to serve until the next regularly scheduled election. The election to fill this seat will be to fill the unexpired term of this office, unless the seat was expiring and was to be filled at the next election, in which case the election will be to fill the new term

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:2091(B) and (C) et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Registrars of Voters Employees' Retirement System, LR 38:

### **Family Impact Statement**

The proposed Rule for the election of the Registrars of Voters Employees' Retirement System should not have any known or foreseeable impact on any family as defined by R.S. 49:972 or on family formation, stability and autonomy. Specifically, 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 personal 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**

Any interested person may submit written data, views, arguments or comments regarding the proposed Rule to Lorraine Dees, Director of the Registrars of Voters Employee Retirement System by mail to P.O. Box 57, Jennings, LA 70546. All comments must be received no later than February 15, 2012.

Lorraine C. Dees  
Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Retirement System Trustees Election Procedures**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change, which requires mail ballots to elect trustees to the Registrars of Voters Employees' Retirement System (ROVERS), is estimated to cost the state approximately \$400 in FY 12. The anticipated cost for the state includes the cost for postage, ballot printing, envelopes and paper. No cost to local governments is anticipated.

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

These regulations will have no impact on revenue collections of state or local governmental units.

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

There are no estimated costs and/or economic benefits that should affect any persons or nongovernmental group as a result of this rule change.

### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated impact on competition and employment as a result of this rule change.

Lorraine C. Dees  
Director  
1111#059

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

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

2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) State Implementation Plan (SIP) Revisions

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice that the Office of Environmental Services, Air Permits Division, Manufacturing Section, will submit to the Environmental Protection Agency (EPA) a revision to the infrastructure as required by section 110(a)(1) and (2) of the Clean Air Act (CAA).

On October 15, 2008, EPA revised the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ . Pursuant to sections 110(a)(1) and (2) of the CAA, each state is required to submit a plan to provide for the implementation, maintenance and enforcement of a newly promulgated or revised NAAQS.

If any party wishes to have a public hearing on this matter, one will be scheduled and the comments gathered at such hearing will be submitted as an addendum to the original submittal. All interested persons are invited to submit written comments concerning the revisions no later than 4:30 p.m., December 29, 2011, to Vivian H. Aucoin, Office of Environmental Services, P.O. Box 4313, Baton Rouge, LA 70821-4313, or to fax (225) 219-3240, or by email to [vivian.aucoin@la.gov](mailto:vivian.aucoin@la.gov).

A copy of the recommendation may be viewed online at the LDEQ website or the LDEQ Headquarters at 602 North Fifth Street, Room 536-03.

Herman Robinson, CPM  
Executive Counsel

1111#079

## 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, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Rimrod Corporation	Houma	L	Cole-Dawson Heirs	001	238727

Operator	Field	District	Well Name	Well Number	Serial Number
Frank B Mcgrath	Monroe	M	Katie Smith	001	150376
Frank B Mcgrath	Monroe	M	Katie Smith	003	150566
Frank B Mcgrath	Monroe	M	Katie Smith	002	150569
Frank B Mcgrath	Monroe	M	Temple	002	150758
Frank B Mcgrath	Monroe	M	Turner	001	150929
Frank B Mcgrath	Monroe	M	Jeffers	001	151024
Frank B Mcgrath	Monroe	M	Griffin	002	151832
Frank B Mcgrath	Monroe	M	Page	001	151849
Frank B Mcgrath	Monroe	M	Page	002	152007

James H. Welsh  
Commissioner

1111#023

## POTPOURRI

### Department of Natural Resources Office of Conservation Environmental Division

Legal Notice—Pinnergy Ltd.

Notice is hereby given that the commissioner of conservation will conduct a hearing at 6 p.m., Thursday, December 22, 2011, at the De Soto Parish Police Jury Building located at 101 Franklin Street, Police Jury Meeting Room, Mansfield, Louisiana.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Pinnergy, Ltd., 111 Congress Ave, Austin, TX. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility for disposal of exploration and production waste (E and P Waste) fluids located in Township 12 North, Range 12 West, Section 3 in De Soto Parish.

The application is available for inspection by contacting Mr. Daryl Williams, Office of Conservation, Environmental Division, eighth floor of the LaSalle Office Building, 617 North Third Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the De Soto Parish

Police Jury and the De Soto Parish Main Branch Library in Mansfield, Louisiana no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Williams at (225) 342-7286.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Thursday, December 29, 2011, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation  
Environmental Division  
P.O. Box 94275  
Baton Rouge, Louisiana 70804  
Re: Docket No. ENV 2011-13  
Commercial Facility Well Application  
De Soto Parish

James H. Welsh  
Commissioner

1111#028

**POTPOURRI**  
**Department of Natural Resources**  
**Office of the Secretary**

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that two claims in the amount of \$7,303.44 were received for payment during the period October 1, 2011-October 31, 2011

There were 0 paid and 2 denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2917.863 8942.271	Plaquemines
2919.437 8931.092	Plaquemines

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) 342-9388.

Scott A. Angelle  
Secretary

1111#025

**CUMULATIVE INDEX**  
**(Volume 37, Number 11)**

2011	
Pages	Issue
1-437 .....	January
438-759 .....	February
760-1069 .....	March
1070-1324 .....	April
1325-1476 .....	May
1477-2044 .....	June
2045-2320 .....	July
2321-2551 .....	August
2552-2903 .....	September
2904-3135 .....	October
3136-3396 .....	November

  

EO—Executive Order
PPM—Policy and Procedure Memoranda
ER—Emergency Rule
R—Rule
N—Notice of Intent
CR—Committee Report
GR—Governor's Report
L—Legislation
P—Potpourri

**ADMINISTRATIVE CODE UPDATE**

**Cumulative**

January 2010-December 2010, 428  
January 2011-March 2011, 1301

**AGRICULTURE AND FORESTRY**

**Agricultural Commodities Commission**

Aflatoxin, 441ER  
Agricultural commodity dealer and warehouse law, 494R  
Giant salvinia, 269R, 809R  
Labeling of coated seeds, 269R  
Landscape architect registration exam, 751P  
Louisiana strawberries, 270R  
Structural pest control commission, 272R

**Agriculture and Environmental Sciences**

Annual quarantine listing for 2011, 1304P  
Bulk pesticide facilities, 2060ER, 2906ER  
Quarantine rescissions for formosan termites, Hurricanes Katrina and Rita, 1060P

**Commissioner, Office of**

Aflatoxin, 441ER

**Feed, Fertilizer, and Agriculture Commission**

Definition of small package, 809R

**Forestry, Office of**

Forestry commission  
Timber harvesting records, 2233N, 2985R  
Tree seedling prices, 2234N, 2985R

**Horticulture Commission**

Landscape architect registration exam, 432P, 2541P, 2893P  
Retail florist exam, 2762N

**Seed Commission, Office of**

Agriculture chemistry lab fees, 809R, 2979R  
Cotton acreage reporting and collection of assessments, 923N, 2583R  
Laboratory testing and seed sampling fees, 356N, 1373R  
Seed labeling; seed certifications; fees, 2226N, 2997R

**AMITE RIVER BASIN AND WATER  
CONSERVATION DISTRICT**

Expropriation of property, 2755N

**CHILDREN AND FAMILY SERVICES**

Formerly Department of Social Services.

**Child Welfare Section**

Annual progress and services report, 1305P  
Daycare services—residential licensing, 513R  
Social services block grant intended use report, 1306P

**Division of Programs**

Child care assistance program  
Employment and training (E and T) hours, 605N, 1373R  
Child support enforcement  
Securing and enforcing medical support obligation, 810R  
Child welfare  
Guardianship subsidy program, 3280N  
Criminal record check, sex offender prohibitions, and state central registry disclosure, 3136ER  
Emergency preparedness and evacuation planning, 2908ER  
Exempt earned income tax credit (EITC) payments, 1071ER, 1421N, 2324ER, 2368R  
Guardianship subsidy program, 2911ER  
Increasing resource limit for households with elderly and disabled members, 2914ER, 3283N  
Portability of criminal history, religious exemption, and sex offender rule, 441ER, 811R

**Economic Stability and Self-Sufficiency Section**

Child care assistance program and quality start, 2789N  
Daycare services—residential licensing, 513R  
TANF caseload reduction report, 432P

**Licensing Section**

Child placing agencies, 816R  
Class "A" regulations, 607N

**Secretary, Office of**

Community and family support system  
Flexible family fund, 2584R

**CIVIL SERVICE**

**Civil Service Commission**

Civil service rule 2.10—rule promulgation, 2795N  
Temporary suspension of merit increase authority, 924N

## **CIVIL SERVICE (continued)**

### **Ethics, Board of**

Local government lobbying, 1374R  
Statements filed pursuant to section 1111(e) of the code of governmental ethics, 357N, 1376R  
Third party ethics training, 2442N

## **ECONOMIC DEVELOPMENT**

### **Business Development Services, Office of**

Enterprise zone program, 296R, 2368R  
Industrial ad valorem tax exemption program, 304R, 2376R  
Industry assistance program, 2795N  
Louisiana filmmakers grant fund program, 515R  
Motion picture investor tax credit program, 514R  
Quality jobs program, 2587R  
Retention and modernization act, 514R  
Sound recording production and infrastructure tax credit programs, 309R  
Tax equalization program, 2799N

### **Entertainment Industry Development, Office of**

Louisiana filmmakers grant fund program, 515R  
Motion picture investor tax credit program, 514R  
Sound recording production and infrastructure tax credit programs, 309R

### **Louisiana Economic Development Corporation**

Louisiana seed capital (LSC) program and seed capital program for the state small business credit initiative (SSBCI) program, 3149ER, 3287N  
Retention and modernization act, 514R  
Small business loan and guaranty (SBL and G) program and state small business credit initiative (SSBCI) program, 3155ER, 3289N

### **Secretary, Office of**

Angel investor tax credit program, 23274ER, 2806N  
Research and development tax credit program, 3285N

## **EDUCATION**

### **Elementary and Secondary Education, Board of**

Bulletin 103—Louisiana Health Education Content Standards, 1178N, 2094R  
Bulletin 105—Louisiana Content Standards for Programs Serving Four-Year Old Children, 518R  
Bulletin 111—The Louisiana School, District, and State Accountability System, 639N, 1122R, 1202N, 1864N, 2118R, 2120R, 2381R, 2445N, 2595R, 2809N, 3200R  
9-12 Transition from 2010 to 2012, 857R  
Bulletin 118—Statewide Assessment Standards and Practices, 858R, 1123R, 3067N  
Bulletin 119—Louisiana School Transportation Specifications and Procedures, 1205N, 2122R, 2449N, 3203R  
Bulletin 125—Standards for Educational Leaders in Louisiana, 861R  
Bulletin 126—Charter Schools, 867R, 1124R, 1422N, 3072N  
Board of director composition, 641N, 1376R, 2382R,

Bulletin 129—The Recovery School District, 310R, 642N, 876R, 1125R, 1377R, 3075N  
Bulletin 131—Alternative Education Schools/Programs Standards, 925N, 2126R  
Bulletin 741—Louisiana Handbook for School Administrators, 645N, 2450N, 2459N, 3193R  
Approval for alternative schools/programs, 933N, 2128R  
Assignment and transfer of students, 1125R  
Attendance, 1126R  
Building and maintenance, 1128R  
Carnegie credit for middle school students, 929N, 2128R, 2456N, 3199R  
Classroom management training, 646N, 1380R  
College and career diploma; career diploma, 1210N, 2129R  
Compulsory attendance, 931N, 2132R  
Connections process, 932N, 2131R  
Curriculum instruction, 547R, 1128R, 1212N, 2132R  
Disciplinary regulations, 1132R, 1133R  
Dropout prevention and recovery, 879R  
Educational leader, 3076N  
Electronic telecommunication devices, 1134R  
Elementary program of studies, 1134R  
Eligibility to participate in high school interscholastic athletics, 1135R  
Family and consumer sciences education, 880R  
General powers of local educational governing authorities, 1136R  
High schools, 1137R  
Home study program, 1137R  
Immunizations, 934N, 2134R  
Physical abuse of teachers and school employees by students, 1138R  
Physical education, 3078N  
Red tape reduction waiver and local empowerment program, 1866N, 3205R  
Religious studies, 935N, 2134R  
Sexual offenses affecting minors, 3079N  
Staff misconduct, 1138R  
Student biometric information, 1139R  
Teachers' retirement system, part-time, seasonal or temporary classroom teacher, 1140R  
Textbooks, 1141R  
Uniform grading policy, 936N, 2390R  
Written policies and procedures, 936N, 1141R, 1380R  
Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators, 940N, 1218N, 1869N, 2142R, 2144R, 2390R, 2597R, 3204R  
Distance learning, 2457N  
School approval, 1221N, 2145R  
Bulletin 746—Louisiana Standards for State Certification of School Personnel, 549R  
Alternate teacher preparation programs, 556R, 3208R  
Certificate endorsements, 647N, 1381R  
Early interventionist, 648N, 1381R  
Educational leader, 3080N  
Elementary mathematics specialist, 1214N, 2135R  
Louisiana teacher assistance and assessment program (LaTAAP)  
Mental health professional counselor, 880R  
Middle school specialty area endorsements, 881R  
Out-of-state (OS) certificate, 882R



## **EDUCATION (continued)**

Out-of-state principal level 2 (OSP2), 882R  
Overview, 1215N, 2135R  
Requirements to add early childhood, 883R, 1561R, 3082N  
Requirements to add elementary, 3083N  
School nurse, 883R, 3084N  
School therapists, 884R  
Social worker, 3085N  
Supervisor of student teaching, 1216N, 2136R  
Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs  
Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools  
Driver education; required, 1217N, 2136R  
Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation, 566R, 927N, 1141R, 2137R  
Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook, 649N  
Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities, 885R  
Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act  
Expenditures, 3087N  
Regulations for students with disabilities, 937N  
Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook, 1382R  
Bulletin 1922—Compliance Monitoring Procedures, 2467N, 3215R  
Minimum foundation program, student membership definition, 1142R, 2471N, 3219R  
Organization, operations, 941N, 2139R  
Regulatory documents—rulemaking, 2472N, 3220R  
State superintendent, 886R

### **Student Financial Assistance Commission**

#### **Student Financial Assistance, Office of**

Bylaws of the advisory committee to the student financial assistance commission, 1081ER, 1430N, 2598R

#### Scholarship/grant programs

Academic year, 2ER, 654N, 1561R  
Applications, federal grant aid and ACT test, 588R  
Award amount, 358N, 1386R, 2814N  
Establishing eligibility, 1327ER, 2554ER, 3089N  
GO grant summer billing, 1388R  
John R. Justice grant program, 359N, 1387R  
LASFAC committees, 1871N, 2986R  
LATTA committees, 2988R  
LTC early start payments, 2062ER  
Student financial assistance commission bylaws, 1328ER  
TOPS equivalent courses, 1872N, 2987R  
Tuition, 3ER, 655N, 1562R

### **Tuition Trust Authority**

#### **Student Financial Assistance, Office of**

LATTA committees, 1873N, 2988R  
Tuition trust authority bylaws, 1329ER

## **ENVIRONMENTAL QUALITY**

### **Office of Environmental Assessment**

#### **Environmental Planning Division**

2008 lead (Pb) national ambient air quality standards (NAAQS) state implementation plan (SIP) revisions, 3385P

#### **Secretary, Office of**

#### **Legal Affairs Division**

2010 annual incorporation by reference of certain federal air quality regulations, 2235N, 2989R  
Control of emissions of smoke, 1143R  
Criteria pollutant emissions inventory, 2992R, 3220R  
Denial of petition for rulemaking under LAC 33:1.909.B.2, 2541P  
Emergency response for solid waste facilities, 1563R  
Greenhouse gases, 361N, 1144R, 1147R, 1389R  
Louisiana engineering review activity form, 1307P  
Non-road engines, 656N, 1391R  
Organic solvents; emissions, 365N, 1150R  
Permit review, 2817N  
Permit term or condition referencing 40 CFR Part 63, Subpart DDDD, 2473N, 3233R  
Pm2.5 NSR implementation, 658N, 1568R, 2145R  
Louisiana pollutant discharge elimination system, 3125P  
Pollutant discharge elimination system exclusions, pesticide application, 1307P  
Regulatory permit for rock, concrete, and asphalt crushing facilities, 2815N  
Removal of pesticide application exemption from LPDES permitting requirements, 588R  
Removal of recyclable material from a non-processing transfer station, 3091N  
Solid waste, 944N, 3004R, 3233R  
Standards for the use or disposal of sewage sludge and biosolids, 751N, 1223N  
Toxic air pollutant emission control program, 1222N  
Use or disposal of sewage sludge and biosolids, 2992R  
Waste expedited permitting, 972N

## **EXECUTIVE ORDERS**

BJ 10-20 Gulf Opportunity Zone Advance Refunding Bond Allocation—Louisiana Local Government Environmental Facilities and community Development Authority, 1EO  
BJ 11-01 Carry Forward Bond Allocation 2010, 438EO  
BJ 11-02 Bond Allocation—Local Government Environmental Facilities and Community Development Authority, 439EO  
BJ 11-03 Bond Allocation—Local Government Environmental Facilities and Community Development Authority, 439EO  
BJ 11-04 State of Emergency—Extension of Qualifying in the Parish of Union, 440EO  
BJ 11-05 Coordinated System of Care Governance Board, 760EO

## **EXECUTIVE ORDERS (continued)**

- BJ 11-06 Executive Branch—Personal Services Expenditure Freeze, 1070EO  
BJ 11-07 Executive Branch—Expenditure Freeze, 1325EO  
BJ 11-08 Executive Branch—DOTD Guidelines for Vehicles, Trucks and Loads which haul Hay from Louisiana to Texas, 1477EO  
BJ 11-09 Merit Increase Freeze—Merit Increase Freeze, 1477EO  
BJ 11-10 Flags at Half Staff—Flags at Half Staff, 1478EO  
BJ 11-11 Executive Branch—Bright Start, 2045EO  
BJ 11-12 Executive Department—Limited Hiring Freeze, 2046EO  
BJ 11-13 Bond Allocation—Louisiana Public Facilities Authority, 2321EO  
BJ 11-14 Bond Allocation—Calcasieu Parish Public Trust Authority, 2321EO  
BJ 11-15 Bond Allocation—Local Government Environmental Facilities and Community Development Authority, 2322EO  
BJ 11-16 Flags at Half Staff, 2322EO  
BJ 11-17 Amended Executive Order BJ 2011-16—Flags at Half Staff, 2323EO  
BJ 11-18 Homeowner Protections for Community Development Disaster Recovery Unit Hazard Mitigation Grant Program, 2552EO  
BJ 11-19 Designation of North Capital Regional Alliance Planning Region, 2553EO  
BJ 11-20 In Memoriam, 2553EO  
BJ 11-21 Executive Branch—DOTD Guidelines for Vehicles, 2904EO  
BJ 11-22 Flags at Half Staff, 2904EO

## **FIREFIGHTERS PENSION AND RELIEF FUND Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity**

Tax qualification provisions, 662N, 1392R

## **GOVERNOR**

### **Administration, Division of**

#### **Cosmetology, Board of**

Exam ineligibility and alternative hair design, 366N, 1150R

#### **Facility Planning and Control**

Louisiana building code, 1228N, 3260R

#### **Information Technology, Office of**

OIT bulletin published, 2541P

#### **Racing Commission**

Corrupt and prohibited practices, 1393R  
Mandatory health screening, 3ER, 1393R  
Training tracks, 3094N

#### **State Travel, Office of**

General travel PPM, 2048PPM

#### **State Uniform Payroll, Office of**

403(b) tax shelter annuity program, 366N, 1404R  
Payroll deduction, 2820N, 3092N

Temporary approval period and transition to the new January-December plan year for approved statewide vendors, 3162ER

### **Tax Commission**

Ad valorem taxation, 1071ER, 1394R

Public hearing, substantive changes to proposed rule oil and gas properties, 1308P

### **Architectural Examiners, Board of**

Licensing; examination procedure; fees; qualifications as apprentice; bonds; funds; advertising violations; continuing education, 2147R

Continuing education, 3290N

Titles, firm names, and assumed names, 663N, 2402R

### **Auctioneers Licensing Board**

Public hearing, substantive change to proposed rules, 1308P

### **Coastal Protection and Restoration Authority**

2012 draft annual plan hearing, 432P

Prohibition of activities on levees and flood control structures, 1479ER

### **Crime Victims Reparations Board**

Compensation to victims, 976N, 1605R

### **Elderly Affairs, Office of**

State plan on aging, 319R

### **Financial Institutions, Office of**

Broker-Dealer and investment adviser recordkeeping requirements, 666N, 2148R

Residential mortgage lending program, 589R

Supervision of salesmen and investment adviser representatives, 983N, 2149R

### **Home Inspectors, Board of**

Licensing, education, standards of practice and code of ethics, 973N, 2404R

### **Homeland Security and Emergency Preparedness**

Homeland security and emergency preparedness, 2822N

Intrastate mutual aid compact, 3293N

### **Law Enforcement and Administration of Criminal Justice, Commission on**

Peace officer training, 319R, 976N, 1606R

### **Licensing Board for Contractors**

Rules and regulations update, 3096N

### **Motor Vehicle Commission**

Automotive industry, 2474N, 2995R, 3261R

### **Public Defender Board**

Trial court performance standards for attorneys representing parents in child in need of care and termination of parental rights cases, 321R

Trial court performance standards for attorneys representing children in delinquency, 984N, 1445N, 2599R

### **Real Estate Appraisers Board**

Appraisers, 332R

Appraisal management companies, 368N, 2406R

### **Real Estate Commission**

Real estate, 2238N, 2998R

### **Shorthand Reporters, Board of Examiners**

Examinations, 2819N

General requirements for certified digital reporters, 317R

### **Used Motor Vehicle Commission**

Licensure and established place of business, 1405R, 1612R

**GOVERNOR (continued)**

**Veterans Affairs, Department of**

Military family assistance program, 978N, 1606R

**HEALTH AND HOSPITALS**

**Adult Protective Services, Division of**

Definition of abuse and sexual abuse, 904R

**Aging and Adult Services, Office of**

All inclusive care for the elderly, reimbursement rate reduction, 761ER, 1003N, 1082ER, 1572R

Definition of abuse and sexual abuse, 904R

Home and community-based services waivers

Adult day health care, 1334ER, 1883N, 2624R

Reimbursement rate reduction 765ER, 1095ER, 1232N, 2157R

Community choices waiver, 2842N

Elderly and disabled adults

Personal assistance services, 899R

Reimbursement rate reduction, 766ER, 1235N

Louisiana physician order for scope of treatment, 709N, 1603R

Nursing facilities

Standards for payment level of care determinations, 341R

Personal care services—long-term

Policy clarifications and service limit reduction, 2082ER

Reimbursement rate reduction, 806ER, 1112ER, 1116ER, 2086ER, 2087ER

Repeal of standards for participation, 2948ER

**Behavioral Health, Office of**

Substance abuse/addictive disorders facilities, minimum licensing standards, physical space requirements exemption, 3188ER

Standards for community mental health

Physical space requirements exemption, 3189ER

**Chiropractic Examiners, Board of**

Specialty advertising, unethical conduct, code of ethics, 1875N

**Certified Social Worker Examiners, Board of**

Social work, 1431N, 2615R

**Citizens with Developmental Disabilities, Office of**

Home and community-based services waivers

Active duty military families, 2840N

Children's choice, service cap and reimbursement rate reduction, 1233N, 2157R

New opportunities waiver, reimbursement rate reduction, 774ER, 1244N, 2157R

Allocation of waiver opportunities for ICF-DD transitions, 2852N

Residential options waiver, 775ER, 1337ER

Supports waiver, reimbursement rate reduction 790ER, 1245N

**Dentistry, Board of**

Administration of botox and dermal fillers, 2264N

Administration of nitrous oxide inhalation analgesia, 1082ER

Advertising; license renewal fees; anesthesia/analgesia administration; continuing education; and dental hygienists examination, 1229N, 2150R

Automated external defibrillator; botox and dermal fillers; licensure; portable and mobile dentistry; nitrous oxide; sanctions; examination of dentist, hygienists, 667N, 1405R

Dentistry requirements, 2826N

Licenses; authorized duties; nitrous oxide inhalation, 590R

**Dietetics and Nutrition, Board of Examiners in**

Registered dietitians, 372N, 2152R

**Emergency Response Network Board**

Interregional transfer protocol, 751N

LERN entry criteria: trauma, LERN destination protocol: trauma, 1466P

**Health Services Financing, Bureau of**

Adult behavioral health services, 3299N

Adult day health care (ADHC)

Minimum licensing standards, 1106ER, 2076ER, 3163ER

All inclusive care for the elderly, reimbursement rate reduction, 4ER, 761ER, 1003N, 1082ER, 1572R

Ambulatory surgical centers, reimbursement rate reduction, 5ER, 761ER, 1004N, 1083ER, 1572R

Behavioral health services

Statewide management organization, 3302N

Children's behavioral health services, 3306N

CommunityCARE program

Primary care providers

Referral exemptions, 338R

Program redesign, 6ER, 1084ER, 2063ER, 3165ER

Coordinated care network, 680N, 1573R

Coordinated system of care, behavioral health services, 1060P

Direct service worker registry, 1088ER, 2067ER, 3169ER

Disproportionate share hospitals payments, 1481ER, 2555ER

Low income and needy care collaborations, 10ER, 1090ER, 2328ER

Non-Rural Community Hospitals, 446ER

EPSDT

Dental program

Covered services and reimbursement rate reduction, 762ER, 1005N, 1598R

Reimbursement rate reduction, 12ER, 1092ER

Substance abuse services, 2327ER

Health services, EarlySteps reimbursement rate reduction, 13ER, 1007N, 1094ER, 1599R

Psychological and behavioral services and school based mental health services, 3308N

Substance abuse services, 1330ER, 3171ER

End stage renal disease facilities, reimbursement rate reduction, 14ER, 763ER, 1008N, 1094ER, 1599R

Estate recovery, 339R

Facility need review—nursing facilities, 2478N, 3264R

Family planning clinics, reimbursement rate reduction, 764ER, 1010N, 1600R

Family planning waiver, reimbursement rate reduction, 765ER, 1231N, 2156R

Recipient qualifications, 2265N, 3027R

Federally qualified health centers

Diabetes self-management training, 448ER, 1483ER, 1880N, 2629R

## HEALTH AND HOSPITALS (continued)

- Fluoride varnish applications, 3172ER
- Forensic supervised transitional residential and aftercare facilities, minimum licensing standards, 380N, 1154R
- Greater New Orleans community health connection waiver, 15ER, 1331ER, 2330ER,
- Home and community-based service providers
  - Minimum licensing standards, 1500ER, 1888N, 2915ER
- Home and community-based behavioral health services waiver, 3310N
- Home and community-based services waivers
  - Active duty military families, 2840N
  - Adult day health care, 1334ER, 1485ER, 1883N, 2624R
    - Reimbursement rate reduction 765ER, 1095ER, 1232N, 2157R
  - Children's choice,
    - Allocation of waiver opportunities, 1336ER, 2333ER
    - Money follows the person rebalancing demonstration extension, 2557ER
    - Service cap and reimbursement rate reduction, 1096ER, 1233N, 2157R
  - Community choices waiver, 2558ER, 2842N
  - Elderly and disabled adults,
    - Personal assistance services, 18ER, 899R
    - Reimbursement rate reduction, 766ER, 1235N
  - Elderly and disabled adult waiver
    - Emergency opportunities and reimbursement methodology, 1490ER
  - New opportunities waiver
    - Allocation of waiver opportunities for ICF-DD transitions, 2852N
    - Reimbursement rate reduction, 774ER, 1244N, 2158R
    - Supports waiver, reimbursement rate reduction, 1245N
  - Repeal of standards for participation, 2948ER
  - Residential options waiver, 775ER, 1337ER, 2334ER
  - Supports waiver, reimbursement rate reduction 790ER
- Home health program
  - Durable medical equipment, provider accreditation, 1246N, 2159R
  - Extended nursing services, reimbursement rate reduction, 21ER, 1097ER, 1247N, 2159R
- Hospital licensing standards
  - Outpatient off-site campuses, 2266N, 3027R
- Inpatient hospital services
  - Low income and needy care collaboration, supplemental payments, 1308P
  - Major teaching hospitals,
    - Qualifying criteria, 449ER, 1533ER, 2949ER, 3173ER
    - Supplemental payments, 1532ER, 2949ER
  - Neonatal and pediatric intensive care units and outlier payment methodologies, 790ER, 1535ER, 2952ER
- Non-rural, non-state hospitals
  - Children's specialty hospitals, 597R
  - Low income and needy care collaboration, 22ER, 1098ER, 2349ER
  - Major teaching hospitals, 1099ER
- Outlier payment methodology, 23ER, 452ER
- Reimbursement methodology, 2350ER
- Reimbursement rate reduction, 24ER, 1100ER
- Non-rural, non-state public hospitals, reimbursement methodology, 1352ER
- Pre-admission certification, 25ER, 1353ER, 2567ER
- Reimbursement methodology, 793ER, 1248N, 2159R
- Small rural hospitals
  - Upper payment limit, 796ER, 2069ER, 2479N, 3176ER
  - Low income and needy care collaboration, 3175ER
- State hospitals, supplemental payments, 452ER, 1353ER, 2351ER
- Intermediate care facilities for persons with developmental disabilities
  - Non-state facilities
    - Reimbursement methodology, 797ER, 2070ER
    - Reimbursement rate reduction, 3028R, 3177ER
  - Public facilities
    - Reimbursement methodology, 797ER, 1538ER, 2954ER
    - Reimbursement rate reduction, 1101ER, 2071ER, 2267N
- Laboratory and radiology services, reimbursement rate reduction, 26ER, 799ER, 1102ER, 2071ER, 2268N, 2352ER, 3028R
- Medicaid program
  - Reimbursement rate and prescription limit reductions, 453ER
- Medical necessity criteria, 341R
- Medical transportation program
  - Emergency ambulance services, reimbursement rate reduction, 27ER, 1103ER, 2270N, 2353ER, 3029R
  - Supplemental payments, 1539ER, 2073ER, 2354ER, 2568ER
  - Non-emergency ambulance services, reimbursement rate reduction, 28ER, 1104ER, 2271N, 2356ER, 3030R
  - Non-emergency medical transportation, reimbursement rate reduction, 29ER, 800ER, 1105ER, 2074ER, 2273N, 2357ER, 3030R
- Mental health rehabilitation program,
  - Provider participation requirements, 399N, 1173R
  - Reimbursement rate reduction, 29ER, 1105ER, 2358ER
  - Termination of parent/family intervention (intensive) services and continued treatment clarifications, 800ER, 2075ER, 2955ER
  - Termination of parent/family intervention (intensive) services and reimbursement rate reduction, 2480N, 3264R
- Multi-systemic therapy
  - Reimbursement rate reduction, 30ER, 802ER, 1108ER, 2078ER, 2358ER, 2482N, 2957ER, 3265R
- Nursing facilities
  - Minimum licensing standards
    - Approval of facility plans, 1541ER, 1921N, 2630R
    - Nurse aide training and competency evaluation program, 2274N
  - Per diem rate reduction, 401N, 1174R
  - Reimbursement methodology
    - Direct care multiplier and fair rental value component, 1011N, 1541ER, 1922N, 2631R

**HEALTH AND HOSPITALS (continued)**

Low income and needy care collaboration, 3178ER  
Minimum data set assessments, 31ER, 1354ER, 2571ER  
Private room conversions, 2958ER  
Reimbursement rate reduction, 34ER, 902R  
Standards for payment, level of care determinations, 341R  
Transition of state-owned or operated nursing facility, 903R  
Outpatient hospital services  
Diabetes self-management training, 454ER, 1542ER, 2574ER  
Duration of outpatient status, 1012N, 1600R  
Hospital provider-based outpatient clinics, 2284N, 3030R  
Non-rural, non-state hospitals and children's specialty hospitals, reimbursement rate reduction, 35ER, 803ER, 1109ER, 2079ER, 2359ER, 2484N, 2958ER, 3266R  
Non-rural, non-state hospitals, major teaching hospitals, 1111ER  
Small rural hospitals,  
Low income and needy care collaboration, 3178ER  
Upper payment limit, 805ER, 2081ER, 2486N, 3186ER  
Personal care services—long-term, policy clarifications and service limit reduction, 2082ER, 3181ER  
Personal care services—long-term, reimbursement rate reduction, 37ER, 806ER, 1112ER, 1116ER, 2086ER, 2087ER, 2489N, 3267R  
Pharmacy benefits management program  
Lock-in program, 2490N, 3268R  
Maximum allowable costs, 1357ER, 2575ER  
Medication administration, influenza vaccinations, 1117ER, 2361ER  
Minimum allowable costs, 38ER  
Prescription limit reduction, 455ER, 1358ER, 2493N, 2576ER, 3270R  
Prescription time limits, 3313N  
Pregnant women extended services  
Dental services, reimbursement rate reduction, 39ER, 807ER, 1117ER, 2087ER, 2362ER, 2494N, 2960ER, 3270R  
Substance abuse screening and intervention services, 1119ER, 2088ER, 3185ER  
Professional services program  
Diabetes self-management training, 456ER, 1543ER, 2577ER  
Fluoride varnish applications, 3185ER  
Physician services  
Obstetrics rate increase, 904R  
Reimbursement methodology, supplemental payments, 457ER, 1544ER, 2961ER  
Prosthetics and orthotics  
Osteogenic bone growth stimulators, 1013N, 1600R  
Psychiatric residential treatment facilities, 3314N  
Minimum licensing standards, 3317N  
Rural health clinics  
Diabetes self-management training, 458ER, 1546ER, 1924N  
Fluoride varnish applications, 3187ER

Hospital-based rural health clinics, wrap-around payments, 2496N  
School based behavioral health services, 3346N  
Standards for community mental health, 3189ER  
Physical space requirements exemption, 3189ER  
Substance abuse/addictive disorders facilities, minimum licensing standards, physical space requirements exemption, 3188ER  
Physical space requirements exemption, 3188ER,  
Substance abuse services, 3349N  
Therapeutic group homes, 3351N  
**Licensed Professional Counselors, Board of Examiners**  
License of title for marriage and family therapy, 706N, 1601R, 2162R  
Practice of mental health counseling for serious mental illnesses, 2089ER, 2963ER  
Professional assistance program, 344R  
**Medical Examiners, Board of**  
Clinical laboratory personnel, licensure and certification, 596R, 1439N, 2401R  
Enforcement terms; unprofessional conduct, 336R  
Licensure and certification; reciprocity, 337R  
Medical psychologists, general, licensure, certification and practice, 888R, 1150R  
Physician assistants—practice, 2285N, 2541P  
Physician consultation or collaboration with medical psychologists, 897R  
Respiratory therapists, licensure, certification and practice, 2828N  
**Nursing, Board of**  
Administration of anesthetic agents, 898R  
Alternative to disciplinary proceedings, 1877N, 3025R  
Denial or delay of licensure, 3296N  
Paperless licensing revisions, 1878N, 3025R  
**Nursing Facility Administrators, Board of Examiners**  
Administrator-in-training, 2914ER, 3105N  
Nursing facility administrators, 590R, 887R  
**Physical Therapy Board**  
Physical therapy, 3031R  
Public hearing, substantive changes to proposed rules, comprehensive revision, 1060P, 2304P  
**Public Health, Office of**  
Added controlled dangerous substances, 41ER, 1015N, 1359ER  
Added use of vital records in program administration, 2578ER, 2963ER, 3190ER  
Marine and fresh water animal food products, 3108N  
Maternal and child health section  
Public notice of MCH block grant, 2033P  
Milk code, 1930N, 2633R  
Nutrition services, special supplemental nutrition program for women, infants and children, 2542P  
Preventive health and health services block grant hearing, 433P, 2304P, 3125P  
Public buildings, schools and other institutions, 1252N, 1440N, 2165R  
Tuberculosis control program  
Inmate health, 597R  
Mandatory testing, 598R  
Use of vital records in program administration, 3111N  
**Radiologic Technology Board of Examiners**  
Fusion technology, 2287N

## HEALTH AND HOSPITALS (continued)

### Secretary, Office of

Community and family support system—flexible family fund, 1926N, 2584R

### Speech-Language Pathology and Audiology, Board of Examiners for

Speech pathology and audiology, 671N, 2392R, 2622R

### Veterinary Medicine, Board of

Alternative therapy and collaborative treatment, preceptorship program, and certified animal euthanasia technician, 3106N

Continuing veterinary medicine education, 377N, 1152R

Fall/winter examination dates, 2304P

Prescribing and dispensing drugs

Preceptorship program, 1001N, 1571R

### Wholesale Drug Distributors, Board of

Exemptions, 899R

## INSURANCE

### Commissioner, Office of

Rule number 9—prelicensing education, 1257N, 2168R

Rule number 10—continuing education, 1262N, 2172R

Regulation number 47—actuarial opinion and memorandum regulation, 598R

### Health, Office of

Annual HIPAA assessment rate, 1468P

## LEGISLATION

### House Committee on Ways and Means

Ad valorem taxation, 1303CR

### Senate Committee on Health and Welfare

Legislative oversight review, physical therapy, 2035P

## LOUISIANA LOTTERY CORPORATION

### On-Line Lottery Games

Mega millions, 2289N

On-line lottery games, 3063R

## NATURAL RESOURCES

### Conservation, Office of

Advanced notice of rulemaking and solicitation of comments on emergency action plans, 2309P

Advanced notice of rulemaking and solicitation of comments on water well registration, construction and closure, 1313P

Fees, 2497N, 3271R

Hazardous liquids pipeline safety, 2859N

Hearing notice, CCS Midstream Services, LLC (docket No. Env 2011-04), 1061P

Hydraulic fracture stimulation operations, 2290N, 3064R

Legal notice, docket no. ENV 2011-05, 1317P

Natural gas pipeline safety, 2870N

Orphaned oilfield sites, 433P, 755P, 1062P, 2033P, 2310P, 2542P, 3125P, 3385P

Public hearing, docket No. ENV 2011-08, 2033P

Public hearing, docket No. ENV 2011-09, 2311P

Statewide order no. 29-B—general provisions, 1268N

Statewide orders no. 29-B and 29-B-a, 460ER, 1547ER

Extension of deadline of drilling and completion operation and safety requirements, 2964ER

Surface Mining—Statewide Order 29-O-1, 2025N, 2729R

Vanguard Environmental, LLC public hearing, 433P

Water well construction, location, 2501N

Water well notification requirements, 711N, 2410R

Water wells, 905R

### Environmental Division

Legal notice—Pinnergy ltd, 3385P

Public hearing—application of Heckmann water resources corporation (docket ENV 2011-07), 1538P

Public hearing—docket no. ENV 2011-10, 2312P

Water well registration, construction and closure, 2502N

### Mineral Resources, Office of

Mineral resources, alternative energy leasing and dry hole credit, 2508N

### Secretary, Office of

#### Fishermen's Gear Compensation Fund

Loran coordinates, 755P, 1064P, 1317P, 1318P, 1469P, 2034P, 2312P, 2542P, 2893P, 3126P, 3386P

## PUBLIC SAFETY AND CORRECTIONS

### Corrections Services

Administrative remedy procedure, 2528N, 3275R

Disaster remediation program, 403N, 1174R

Judicial agency residential referral facilities, 41ER, 712N, 1360ER, 1408R

Louisiana sex offender assessment panels, 3379N

Non-Medical furloughs, 720N, 1415R

Offender visitation, 1269N, 2177R

Sex offender payment for electronic monitoring, 3381N

Special agents, 1276N, 2184R

Supervised release of sex offenders upon expiration of sentence, 404N, 1176R

Telephone use and policy on monitoring of calls, 599R

### Gaming Control Board

Casino gaming payment interception, 406N, 1415R

Definition of Louisiana business, 1462N, 2410R

### Liquefied Petroleum Gas Commission

Storage and handling of liquefied petroleum gases, 913R

### Private Investigators, Board of

Little Lake crude oil discharge draft settlement agreement, 2034P

### Private Security Examiners, Board of

Security officer—definition; registration; insignia, 2291N, 3274R

## **PUBLIC SAFETY AND CORRECTIONS (continued)**

### **State Fire Marshal, Office of the**

Commercial building energy conservation code, 1279N, 2185R

Property protection licensing, 408N

State uniform construction code, 601R, 2187R

### **State Police, Office of**

Applicability of regulations, 1278N, 2187R

Breath and blood alcohol analysis methods and techniques, 720N, 721N, 1416R, 1417R

Collection, submission, receipt, identification, storage and disposal of DNA samples, 471ER, 722N, 1417R

Federal motor carrier regulations, 1016N, 1613R

Operator qualifications, 2886N

### **State Uniform Construction Code Council**

State uniform construction code, 913R, 2090ER, 2736R

Wood structural panel standards, 2293N, 3065R

## **REVENUE**

### **Alcohol and Tobacco Control, Office of**

Good standing, 3112N

Tobacconist permits, 3114N

### **Policy Services Division**

Electronic filing mandate for reports and returns related to the sports facility assistance fund, 914R

Electronic filing requirements for oil or gas severance tax, 474ER, 1017N, 1613R

Income tax credits for wind or solar energy systems, 2579ER, 3115N

Natural gas severance tax rate, 2035P

New markets tax credit, 914R

Advanced notice of proposed rulemaking and solicitation of comments on mandatory electronic filing of corporate and individual income tax extensions and extension payments, 1469P

## **TRANSPORTATION AND DEVELOPMENT**

### **Highway Construction**

Access connection permits and driveway permits, 347R

### **Highways/Engineering, Office of**

Advertising on department of transportation-owned assets, 2887N

### **Outdoor Advertising**

Outdoor advertising, 916R

Tourist oriented directional signs, 920R

### **Professional Engineering and Land Surveying Board**

General provisions, 1019N, 2411R, 2752R

Public hearing—substantive changes to proposed rules—general provisions, 2035P

### **Transportation Research Center**

LTRC transportation training and education fund, 354R

## **TREASURY**

### **Deferred Compensation Commission**

Public employees deferred compensation plan, 723N, 1617R

## **Housing Finance Agency**

Turnkey mortgage origination program, 2889N, 3117N

## **Registrars of Voters Employees' Retirement System**

Retirement system trustees election procedures, 3383N

## **Treasurer, Office of**

Permissible investments, 1367ER, 2091ER, 3118N

## **Trustees of the Louisiana State Employees' Retirement System, Board of**

Election to the board of trustees, 1029N, 1614R

## **WILDLIFE AND FISHERIES**

### **Wildlife and Fisheries Commission**

2011 Commercial amberjack season reopens, 2579ER

2011 Fall inshore shrimp season opening, 2364ER

2011-12 Commercial king mackerel closure, 2975ER

2011-12 Deer seasons on kisatchie national forest, 2580ER

2011-12 Early migratory bird seasons, 2363ER

2011-12 Oyster season, 2580ER

2011-12 Oyster season closure, 3190ER

2011-2012 Oyster season—delay opening, 2976ER, 3191ER

2011-2012 Commercial king mackerel season, 48ER

2011-2012 Waterfowl season, 2581ER

Alligator regulations, 1281N, 2121R

Assignment of HINs to undocumented vessels manufactured in Louisiana, 922R

Basin area deer hunting seasons, 3190ER

Calcasieu lake oyster harvester permit, 2294N, 2542P, 3065R

Calcasieu lake public oyster area closure, 1120ER

Civil fish and wildlife values, threatened and endangered species, 1294N, 2434R

Coastal sharks commercial fishery opening, 49ER

Commercial fisheries opening, 1367ER

Crab trap closure and derelict crab trap clean-up, 475ER

Deer hunting season, revisions, 2092ER

Deer management assistance program, 1033N, 2187R, 2752R

Fall inshore shrimp season extension in Breton and Chandeleur Sounds, 1120ER

Fall inshore shrimp season extension in portions of zone 1, 49ER

Gag grouper, 2011-2012 recreational season, 2091ER

General and wildlife management area hunting rules and regulations, 728N

General and WMA turkey hunting regulations, 2295N

Greater amberjack commercial season closure, 1368ER, 3191ER

Greater amberjack recreational season closure, 1368ER

King mackerel commercial season, 476ER

Large coastal shark commercial season closure, 2365ER

Methods of payment for commercial licenses and oyster tags, 745N, 1622R

Mullet harvest rules, 2532N

Oyster Bedding Season—CSA 1, 1560ER

Oyster leases, 1622R

Public seed grounds east of the Mississippi river and oyster lease relocation, 424N, 1624R

**WILDLIFE AND FISHERIES (continued)**

Recreational and commercial fisheries closure, 1369ER, 2976ER, 2977ER  
 Recreational and commercial fisheries opening, 1369ER  
 Red snapper recreational season closure, 1370ER  
 Reef fish—harvest regulations, 2011-2012 commercial reef fish season, 50ER  
 Reef fish—harvest regulations, 2011-2012 recreational reef fish season, 50ER  
 Reef fish—harvest regulations, gag grouper recreational season closure, 51ER  
 Removal of abandoned crab traps, 2890N  
 Resident game hunting season, 746N, 2206R  
 Rules of the road for vessels, 2538N  
 Shrimp season closure in additional portions of zone, 2366ER  
 Shrimp season closure—Zone 1, 476ER  
 Special shrimp season in portion of state inside waters, 1371ER  
 Spring inshore shrimp season  
 Additional season closure, 2092ER, 2364ER  
 Opening dates, 1371ER  
 Partial zone 2 closure, 2093ER  
 Zone 3 closure, 2366ER  
 Spotted seatrout management measures, 354R  
 State outside waters  
 Partial opening of shrimp season, 1120ER  
 Texas border waters, reciprocal agreement and black bass regulations, 1035N, 2439R

Triploid grass carp, 2536N  
 Tuna harvest regulations, 2535N  
 Turkey seasons, 2299N  
 Wildlife rehabilitation program, 602R  
 Use of yo-yo's and trotlines in Lake Lafourche, 355R

**Secretary, Office of**

Atchafalaya Basin closure continuation, 1559ER  
 Atchafalaya Basin flooding closure, 1559ER

**WORKFORCE COMMISSION****Rehabilitation Services, Office of**

Community rehabilitation program, 3119N

**State Plumbing Board**

Continuing professional education programs, 905R, 1463N, 2440R

**Workers' Compensation Administration, Office of**

Average weekly wage rate, 2543P  
 Electronic billing, 2853N  
 Hearing rules, 1053N, 1625R  
 Medical guidelines, 51ER, 426N, 477ER, 1631R  
 Pharmaceutical billing, 2539N  
 Public hearing—substantive changes to proposed rule, 2893P  
 Weekly compensation benefits limits, 2543P

**Workforce Development**

Apprenticeship law, 1037N, 2209R  
 Hearing notice and comment period revision labor and employment, apprenticeship law, 1318P