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This public document was published at a total cost of $1,620. Two hundred fifty copies of this public document were published in this monthly printing at a cost of $1,620. The total cost of all printings of this document including reprints is $1,620. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 49:981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Executive Orders

EXECUTIVE ORDER JBE 20-18

Climate Initiatives Task Force

WHEREAS, Louisiana's working coast is a national treasure, exporting over $120 billion in annual goods, servicing 90 percent of the oil and gas activity in the Gulf of Mexico, producing 21 percent of all commercial fisheries landings by weight in the Lower 48 states, and providing winter habitat for five million migratory waterfowl;

WHEREAS, coastal Louisiana is also a vital regional asset which serves as residence to 2.5 million people and as a historical foundation to our unique cultural heritage;

WHEREAS, Louisiana's coast continues to experience one of the fastest rates of land loss in the world, and parts of our State remain unprotected from or vulnerable to future hurricane and flood event impacts;

WHEREAS, Louisiana and its citizens have suffered catastrophic losses and human, economic, and social harm as a result of increased flood risk due to coastal land loss, and the continued threat of further land loss to Louisiana's coast endangers its residents, economy, and native fish and wildlife species;

WHEREAS, beginning in 2007, Louisiana has adopted, carried out, and updated a comprehensive plan for a sustainable coast (the "master plan");

WHEREAS, the master plan integrates coastal protection strategies and coastal restoration strategies to provide increased flood protection for communities and to maximize the amount of land maintained or restored in coastal Louisiana;

WHEREAS, according to the 2017 Coastal Master Plan, without significant action, continued subsidence and sea level rise over the next fifty years could result in the additional loss of between 2,250 and 4,120 square miles of Coastal Louisiana;

WHEREAS, rising sea levels will reduce the effectiveness of built and planned investments in coastal protection and restoration, threatening the longevity of coastal protection and restoration projects;

WHEREAS as is the case today with natural disasters, impacts from climate change will be disproportionately felt by the residents of our state with the fewest resources;

WHEREAS, in the 2018 Special Report Global Warming of 1.5 Degrees Celsius, the Intergovernmental Panel on Climate Change (the "IPCC") concluded that overall "climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5 degrees and increase further with 2 degrees" above pre-industrial temperatures;

WHEREAS, in the same 2018 Special Report, the IPCC further concluded that reducing greenhouse gas emissions can slow global warming and reduce the magnitude and speed of future sea level rise, enabling greater opportunities for adaptation for human and ecological systems in low-lying coastal and deltaic areas;

WHEREAS, limiting global warming to 1.5 degrees Celsius would require global net human-caused emissions of greenhouse gases to fall by about 45% from 2010 levels by 2030, reaching "net zero emissions" around 2050;

WHEREAS, to improve our resilience, sustain our coast, and help avoid the worst impacts of climate change, Louisiana must proactively work to reduce the greenhouse gas emissions that are driving up global temperatures, raising sea levels, and increasing risks that threaten our health and safety, quality of life, economic growth, and vital habitats and ecosystems;

WHEREAS, a significant reduction in greenhouse gas emissions will require a coordinated, intentional, and collaborative state effort;

WHEREAS, Louisiana Revised Statute 49:214.3.1 directs the Governor, through his Executive Assistant for Coastal Activities, to "coordinate the powers, duties, functions, and responsibilities of any state agency relative to integrated coastal protection";

WHEREAS, Louisiana is committed to working with Louisiana businesses, industries, local communities, and civil society to reduce emissions through a suite of balanced policy solutions;

WHEREAS, by following the science and welcoming all stakeholders, Louisiana can and will reduce greenhouse gas emissions to limit the impacts of climate change that harm the state's natural and cultural heritage, while adapting to maintain its position as a world leader in energy, industry, agriculture, and transportation;

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested in the Constitution and laws of the State of Louisiana do hereby order and direct as follows:

SECTION 1: The Climate Initiatives Task Force (hereafter the "Task Force") is hereby established within the executive branch, Office of the Governor—Coastal Activities.

SECTION 2: The duties of the Task Force shall include, but are not limited to, the following:

A. Review and comment on ongoing efforts to update the state's greenhouse gas emissions inventory;

B. Investigate and make recommendations for the reduction of greenhouse gas emissions originating in Louisiana to achieve the following greenhouse gas emissions reduction goals:

1. By 2025, reduce net greenhouse gas emissions by 26-28% of 2005 levels;

2. By 2030, reduce net greenhouse emissions by 40-50% of 2005 levels; and

3. By 2050, reduce greenhouse gas emissions to net zero;

C. Develop policies, strategies, and incentives designed to achieve the net emissions reduction targets established in this Order, while improving the health and

welfare of the people of Louisiana and advancing Louisiana's economic and energy profile.

SECTION 3: By February 1, 2021, the Task Force shall submit to the Governor and Coastal Protection and Restoration Board an interim report recommending strategies, policies, and incentives for meeting the goals provided in Section 2 of this Order. The report, in whole or in part, shall also be submitted to the relevant legislative committees.

SECTION 4: By February 1, 2022, the Task Force shall submit to the Governor and Coastal Protection and Restoration Board a detailed plan for meeting the goals provided in Section 2 of this Order. The plan, in whole or in part, shall also be submitted to the relevant legislative committees.

SECTION 5: After February 1, 2022, the Task Force shall meet at least annually and shall submit to the Governor and Coastal Protection & Restoration Board an annual status report on the implementation of greenhouse gas emission reduction strategies, policies, and incentives.

SECTION 6: The Coastal Protection and Restoration Authority Board shall consider the recommendations of the Task Force for inclusion in the comprehensive plan for a sustainable coast.

SECTION 7: The Task Force shall be composed of a maximum of twenty-three (23) voting members who, unless otherwise specified, shall be appointed by and serve at the pleasure of the Governor and shall include:

1. The Executive Assistant to the Governor for Coastal Activities, or his designee,
2. The Commissioner of Administration, or his designee;
3. The Commissioner of the Louisiana Department of Agriculture and Forestry, or his designee;
4. The Executive Director of the Coastal Protection and Restoration Authority, or his designee;
5. The Secretary of Louisiana Economic Development, or his designee;
6. The Secretary of the Department of Natural Resources, or his designee;
7. The Secretary of the Department of Environmental Quality, or his designee;
8. The Secretary of the Department of Transportation and Development, or his designee;
9. A member of the Louisiana Public Service Commission, or his designee;
10. The Speaker of the Louisiana State House of Representatives, or his designee;
11. The President of the Louisiana State Senate, or his designee;
12. A person appointed by the Governor from at least three nominations submitted by the Louisiana Mid-Continent Oil and Gas Association;
13. A person appointed by the Governor from at least three nominations submitted by the Louisiana Chemical Association;
14. A representative of an electricity utility;
15. A nonvoting representative of a federal scientific agency;
16. A member of the environmental nonprofit community;
17. A person with experience in community development and engagement;
18. A member of Louisiana's academic community;
19. A member of the environmental justice community;
20. A member of an indigenous tribe, nation, or community;
21. A representative of local government perspectives;
22. A person with qualifications deemed appropriate by the Governor, which shall include experience in climate change policy; and
23. A person appointed at-large.

SECTION 8: The Executive Assistant to the Governor for Coastal Activities, or his designee, shall serve as the Chair of the Task Force.

SECTION 9: The Task Force shall meet at regularly scheduled meetings and at the call of the Governor or the Chair. All meetings of the Task Force shall be subject to the Open Meetings Law as contained in La. R.S. 42:11 et seq. A majority of the serving members of the Task Force shall constitute a quorum. The Task Force shall act by a majority vote of its serving members. The nonvoting representative of a federal scientific agency shall not count as a member for quorum or voting purposes.

SECTION 10: The Task Force shall be supported by committees, including but not limited to the following:

A. power production, distribution, and use;
B. land use, buildings, and housing;
C. transportation;
D. agriculture, forestry, conservation, and waste management;
E. manufacturing and industry; and
F. mining and oil and gas production.

The membership of the committees and their co-chairs shall be determined by the Task Force Chair and may include individuals who do not serve on the Task Force. Each committee shall be co-chaired by at least one member of the Task Force.

SECTION 11: The Task Force and its committees shall be assisted and advised by a scientific advisory group, a finance advisory group, an equity advisory group, and a legal advisory group.

SECTION 12: The Task Force shall be staffed by employees of the Office of the Governor, Office of Coastal Activities. In addition, all executive branch agencies shall cooperate fully with the Task Force and provide any assistance necessary, upon request of the Task Force or its staff.

SECTION 13: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the Task Force in implementing the provisions of this Order and the recommendations of the Task Force.

SECTION 14: The Task Force may collaborate with or seek input from additional local, state, and federal agencies or other stakeholders, including university or not-for-profit research institutions, to develop, implement, and evaluate the necessary components or actions of the Task Force.

SECTION 15: Task Force members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Task Force.

SECTION 16: This Order is effective upon signature and shall continue in effect until, amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 19th day of August, 2020.

John Bell Edwards
Governor

ATTEST BY
THE GOVERNOR
R. Kyle Aroin
Secretary of State
2009#064

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences

Guava Root Knot Nematode Quarantine
(LAC 7:XV.171)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and the authority of the state entomologist under the provisions of R.S. 3:1652, and in order to avoid a lapse in coverage until a permanent rule is in effect, notice is hereby given that Department of Agriculture and Forestry (Department) is, by emergency rule, amending LAC 7:XV.171. The amendments to this rule will allow sweet potatoes for processing from quarantined areas into Louisiana under special permit.

The department previously adopted the Guava Root Knot Nematode (GRKN) quarantine which restricts the movement of sweet potatoes into Louisiana. Excessive rainfall during the 2019 fall harvest season has caused a hardship on sweet potato production which will likely affect the welfare of the sweet potato processing industry in Louisiana if measures are not taken to mitigate the situation. A shortage of sweet potatoes caused by adverse environmental conditions, along with the GRKN quarantine currently in place, has limited the amount of sweet potatoes the processing industry can source from Louisiana producers and producers from surrounding states. Due to these adverse conditions and the current GRKN quarantine, Louisiana processors will be approximately 30 percent short of their annual sweet potato volume needed to keep processing facilities running year round. Without the ability to purchase additional sweet potatoes from outside the mid-south region, the industry is in jeopardy of having to cease operations for several months. Employees of processing facilities may be affected by potential plant closings as it is estimated that the total cost of lost wages and benefits would amount to $2.5 million. Potential plant closings could also affect the welfare of the sweet potato industry by creating a limited market for producers to sell their sweet potatoes to processors. In 2019, sweet potato acreage in Louisiana was approximately 7,600 acres. According to Louisiana State University AgCenter, the processing market in Louisiana is a significant market and utilizes 65 percent of Louisiana‘s sweet potato crop. This declaration of emergency is required in order to provide the sweet potato processing industry an opportunity to source sweet potatoes from areas quarantined for GRKN to the processing facility under special permit issued by the department.

This Rule shall have the force and effect of law upon signature, September 1, 2020, and will remain in effect 120 days, unless renewed by the commissioner of agriculture and forestry or until permanent rules are promulgated in accordance with law.

Title 7
AGRICULTURE AND FORESTRY
Part XV. Plant Protection and Quarantine
Chapter 1. Crop Pests and Diseases
Subchapter H. Guava Root Knot Nematode Quarantine
§171. Guava Root Knot Nematode Quarantine

A. - D.1. …

2. certified seed sweet potatoes and sweet potatoes for processing may be moved from the quarantine area into Louisiana under a Special Permit issued by Louisiana Department of Agriculture and Forestry.

D.3. – F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652, 3:1653.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 45:1437 (October 2019), amended LR 46:

Mike Strain DVM
Commissioner

2009#014

DECLARATION OF EMERGENCY

Department of Children and Family Services
Child Welfare Section

Extended Foster Care Services (LAC 67:V.3903)

The Department of Children and Family Services (DCFS) has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953 (B) to amend LAC 67:V, Subpart 5, Foster Care, Chapter 39, Chafee Foster Care Independence Program and Extended Foster Care, Section 3903. This Emergency Rule shall be effective September 17, 2020, and shall remain in effect for a period of 120 days.

The department considers emergency action necessary to facilitate the expenditure of IV-E funds for extended foster care services to the estimated 220 children who are currently eligible for these foster care services as specified in Act 400 of the 2019 Regular Session of the Louisiana Legislature. Without emergency action, the department will not be able to draw down IV-E funds for this population of young adults and will not be in compliance with Act 400 of the Regular Session of the Louisiana Legislature. Young adults who are eligible for extended foster care services will not be able to receive such support during their transition to adulthood.

Title 67
SOCIAL SERVICES
Part V. Child Welfare
Subpart 5. Foster Care
Chapter 39. Chafee Foster Care Independence Program and Extended Foster Care
§3903. Extended Foster Care Services

A. The DCFS will continue to provide foster care services to young adults age 18 to 21 who are completing

secondary education or a program leading to an equivalent credential, enrolled in institution that provides postsecondary or vocational education, participating in a program or activity designed to promote employment or remove barriers to employment, employed at least eighty hours per month, or is incapable of doing any part of the activities in the aforementioned due to a medical condition in accordance with R.S. 46:288.1, et seq. They shall be eligible for foster care services until their twenty-first birthday as long as the youth is willing and continues to meet the above stated eligibility criteria. The youth initiates extended foster care services through signing a voluntary placement agreement. The young adult in foster care shall be eligible for all foster care services in accordance with their voluntary placement agreement and case plan; and, their foster parents, custodian or other placement provider continued services and benefits for the period of time the young adult is eligible and participating in the extended foster care program.

B. The DCFS will notify all foster children and their foster parents/custodians/placement provider in writing of the availability of extended foster care services; eligibility for the services; and, the benefits at the foster child's seventeenth birthday. The written notifications will continue every 90 days unless the foster child and foster parents/custodian/placement provider consent to participate in extended foster care, or the child becomes ineligible for participation in the program.

AUTHORITY NOTE: Promulgated in accordance with Act 400 of the 2019 Regular Session and R.S. 46:288.1, et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Child Welfare, LR 45:508 (April 2019), effective May 1, 2019, amended LR 46:

Marketa Garner Walters
Secretary

2009#044

DECLARATION OF EMERGENCY

Department of Health
Behavior Analyst Board

Temporary Reduction of License and
Certificate Renewal Fees (LAC 46:VIII.305)

The Louisiana Behavior Analyst Board is exercising the emergency provisions of the Administrative Procedure Act, specifically at R.S. 49:953 (B), to promulgate an Emergency Rule to implement a temporary reduction of license and certificate renewal fees.

This Emergency Rule is the Louisiana Behavior Analyst Board's response to the disruption of normalcy experienced by the citizens of Louisiana due to COVID-19. Proclamation No. JBE 2020-33 and Proclamation No. JBE 2020-41 declared a stay at home order posing a threat to the public health, safety, and welfare of Louisiana citizens.

In order to assist the public during this crisis, the board has approved a temporary reduction of renewal fees for Licensed Behavior Analysts and State Certified Assistant Behavior Analysts. This Emergency Rule shall become effective November 1, 2020 and remain in effect through December 31, 2020.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part VIII. Behavior Analysts
Chapter 3. Application Procedures and Board Fees
§305. Licensing and Administrative Fees

A. - B. …

C. Temporary reduction of license and certificate renewal fees effective November 1, 2020 through December 31, 2020, due to COVID 19 disruption of normalcy shall be as follows:

1. annual renewal fee for licensed behavior analyst due by December 31, 2020—$200.00;

2. annual renewal fee for state certified assistant behavior analyst due by December 31, 2020—$125.00.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3714.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1930 (October 2014), amended LR 36:

Rhonda Boe
Executive Director

2009#005

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Intermediate Care Facilities for Persons with
Intellectual Disabilities—Reimbursement Methodology
(LAC 50:VII.32903)

The Department of Health, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature directed the Department of Health, Bureau of Health Services Financing to increase reimbursement rates for non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) that downsized from over 100 beds to less than 35 beds prior to December 31, 2010, without the benefit of a cooperative endeavor agreement. In compliance with Act 1, the department amends the provisions governing reimbursement for non-state ICFs/IID to increase the reimbursement rates to qualifying facilities.

This action is being taken to promote the health and welfare of Medicaid recipients in ICFs/IID by ensuring continued provider participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase programmatic costs in the Medicaid Program by $1,083,628 for state fiscal year 2020-2021.

This Emergency Rule was adopted on August 25, 2020 by the Department of Health, Bureau of Health Services

Financing to amend the provisions governing reimbursement for intermediate care facilities for persons with intellectual disabilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities
Chapter 329. Reimbursement Methodology
Subchapter A. Non-State Facilities
§32903. Rate Determination

A. - M. ...

N. Pursuant to the provisions of Act 1 of the 2020 First Extraordinary Session of the Louisiana Legislature, effective for dates of service on or after July 1, 2020, private ICF/IID facilities that downsized from over 100 beds to less than 35 beds prior to December 31, 2010 without the benefit of a cooperative endeavor agreement (CEA) or transitional rate and who incurred excessive capital costs, shall have their per diem rates (excluding provider fees) increased by a percent equal to the percent difference of per diem rates (excluding provider fees) they were paid as of June 30, 2019. See chart below with the applicable percentages:

	Intermittent	Limited	Extensive	Pervasive
1-8 beds	6.2 percent	6.2 percent	6.2 percent	6.1 percent
9-15 beds	3.2 percent	6.2 percent	6.2 percent	6.1 percent
16-32 beds	N/A	N/A	N/A	N/A
33+ beds	N/A	N/A	N/A	N/A

1. The applicable differential shall be applied anytime there is a change to the per diem rates (for example, during rebase, rate reductions, inflationary changes, or special legislative appropriations). This differential shall not extend beyond December 31, 2024.

AUTHORITY NOTE: Promulgated in 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), LR 37:3028 (October 2011), LR 39:1780 (July 2013), LR 39:2766 (October 2013), LR 41:539 (March 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 46:

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 Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson 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.

Dr. Courtney N. Phillips
Secretary

2009#011

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services
and
Office for Citizens with Developmental Disabilities

Programs and Services Amendments Due to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency
Home and Community-Based Services Waivers
and Long-Term Personal Care Services

On January 30, 2020, the World Health Organization declared a public health emergency of international concern and on January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States, effective as of January 27, 2020, in response to the recent coronavirus disease 2019 (hereafter referred to as COVID-19) outbreak. On March 11, 2020, Governor John Bel Edwards declared a statewide public health emergency to exist in the State of Louisiana as a result of the imminent threat posed to Louisiana citizens by COVID-19. Likewise, the presidential declaration of a national emergency due to COVID-19 has an effective date of March 1, 2020.

In response to these public health emergency declarations and the rapid advancement of COVID-19 throughout Louisiana, the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services (OAAS), the Office of Behavioral Health (OBH), and the Office for Citizens with Developmental Disabilities (OCDD) promulgated Emergency Rules which amended the provisions of Title 50 of the *Louisiana Administrative Code* in order to adopt temporary measures to provide for the continuation of essential programs and services to ensure the health and welfare of the citizens of Louisiana in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. (*Louisiana Register*, Volume 46, Number 4 and *Louisiana Register*, Volume 46, Number 7).

The department has now determined that it is necessary to promulgate an Emergency Rule to further amend the Adult Day Health Care (ADHC) Waiver and the Community Choices Waiver (CCW), and to amend the provisions governing long term-personal care services (LT-PCS) in order to ensure that these services continue uninterrupted throughout the COVID-19 public health emergency declaration. This Emergency Rule also clarifies that the home and community-based services (HCBS) waiver provisions of the Emergency Rules published in the April 20, 2020 edition of the *Louisiana Register* which correspond to Louisiana's section 1915(c) Appendix K waiver will remain in effect for the duration of the Emergency Rules published in April 2020 or until the Appendix K waiver termination date of January 26, 2021, whichever is later.

This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or the duration of the COVID-19 public health emergency declaration, whichever is shorter.

The Department of Health, Bureau of Health Services Financing, OAAS and OCDD hereby amend the provisions governing the ADHC Waiver, the CCW, and LT-PCS throughout the COVID-19 public health emergency declaration, and clarify that the HCBS waiver provisions which correspond to Louisiana's section 1915(c) Appendix K waiver will remain in effect for the duration of the Emergency Rules published in the April 20, 2020 *Louisiana Register* or until the Appendix K waiver termination date of January 26, 2021, whichever is later.

Services for Special Populations—Personal Care Services (LAC 50:XV.Subpart 9)

Due to the COVID-19 public health emergency declaration, the Office of Aging and Adult Services (OAAS) may also utilize the level of care eligibility tool (LOCET) to determine if an individual meets eligibility qualifications for long term-personal care services (LT-PCS) 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 LOCET may also be used to generate a score that measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment. Criteria used to generate the score will be consistent with criteria on the interRAI home care assessment tool currently used. This score will correspond with the same level of support category and allocation of weekly service hours associated with that level.

OAAS may use the LOCET until such time as the applicant/recipient is able to be assessed using the uniform interRAI home care assessment tool.

Home and Community-Based Services Waiver—Adult Day Health Care (LAC 50:XXI.Subpart 3)

During the COVID-19 public health emergency declaration, and with approval from the Centers for Medicare and Medicaid Services (CMS), the following options may be available through the Adult Day Health Care (ADHC) Waiver:

The State may allow ADHC providers to provide services telephonically to waiver participants that cannot attend the ADHC center to ensure continuity of services.

The State is adding the following services in the ADHC Waiver:

Home Delivered Meals. The purpose of home delivered meals is to assist in meeting the nutritional needs of an individual in support of the maintenance of self-sufficiency and enhancing the quality of life. Up to two nutritionally balanced meals per day may be delivered to the home of the participant. This service may be provided by the ADHC provider.

Assistive Devices and Medical Supplies. Assistive devices and medical supplies are specialized medical equipment and supplies that include:

Devices, controls, appliances or nutritional supplements specified in the Plan of Care that enable participants to increase their ability to perform activities of daily living (ADLs);

Devices, controls, appliances or nutritional supplements that enable participants to perceive, control or communicate with the environment in which they live or provide emergency response;

Items, supplies and services necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items;

Supplies and services to assure participants' health and welfare;

Other durable and non-durable medical equipment and necessary medical supplies that are necessary but not available under the Medicaid State Plan;

Personal Emergency Response Systems (PERS);

Other in-home monitoring and medication management devices and technology;

Routine maintenance or repair of specialized equipment; and

Batteries, extended warranties and service contracts that are cost effective and assure health and welfare.

This includes medical equipment not available under the Medicaid State Plan that is necessary to address participant functional limitations and necessary medical supplies not available under the Medicaid State Plan.

Home and Community-Based Services Waiver—Community Choices Waiver (LAC 50:XXI.Subpart 7)

During the COVID-19 public health emergency declaration, and with approval from the Centers for Medicare and Medicaid Services (CMS), the state may allow ADHC providers to provide services telephonically to waiver participants that cannot attend the ADHC center to ensure continuity of services.

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 Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson 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.

Dr. Courtney N. Phillips
Secretary

2009#010

DECLARATION OF EMERGENCY

Department of Insurance
Office of the Commissioner

Emergency Rule 45—Suspension of Certain Statutes Regarding Cancellations, Terminations, Non-Renewals, and Nonreinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by the State of Emergency Declared by Governor John Bel Edwards on August 21, 2020, Due to Hurricane Laura
(LAC 37:XI.Chapter 45)

In August and September 2020, President Donald J. Trump declared a State of Emergency in Louisiana due to the devastation caused by Hurricane Laura and its aftermath. Contemporaneously, Governor John Bel Edwards declared a State of Emergency in Louisiana for the same reasons.

Furthermore, President Donald J. Trump invoked the Stafford Act and declared a national emergency regarding Hurricane Laura and its aftermath which has caused devastation to the lives and property of the citizens of Louisiana, and the residual effect of that storm poses a significant risk to the health, safety and welfare to a substantial number of the citizens of our state.

Emergency Rule 45 is issued to address the devastation caused by Hurricane Laura and its aftermath that has created emergency conditions threatening the health, safety and welfare of the citizens of Louisiana who are insureds and who either reside in or have insured property located in one of the following 16 parishes, to wit: Acadia; Allen; Beauregard; Calcasieu; Cameron; Grant; Jackson; Jefferson Davis; Lincoln; Natchitoches; Ouachita; Rapides; Sabine; Vermilion; Vernon; or Winn. Emergency Rule 45 is issued under the authority of the Commissioner of Insurance for the State of Louisiana, pursuant to the following: Proclamation No. JBE 2020-108 issued on August 21, 2020 by Governor John Bel Edwards declaring a State of Emergency extending from August 21, 2020 through September 20, 2020, unless terminated sooner; and Proclamation No. JBE 2020-115 issued on September 3, 2020 transferring authority over all insurance regulatory statutes in The Louisiana Insurance Code, Title 22 of the Louisiana Revised Statutes of 1950, to Commissioner of Insurance James J. Donelon (Commissioner).

Accordingly, Emergency Rule 45 shall apply to any and all types of insurers as set forth in R.S. 22:48, and any and all kinds of insurance as set forth in R.S. 22:47, including, but not limited to all property and casualty insurers, all life insurers, all annuity insurers, and all health maintenance organizations (HMOs), managed care organizations (MCOs), preferred provider organizations (PPOs), pharmacy benefit managers (PBMs), and third party administrators (TPAs) acting on behalf of an HMO, MCO, PPO, and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana (collectively known as "health insurance issuers") and their insureds, policyholders, members, subscribers, enrollees and certificate holders.

Hurricane Laura and its aftermath has created a mass disruption to the normalcy previously enjoyed in Louisiana and is an immediate threat to the public health, safety, and welfare of Louisiana citizens. To minimize these threats, the State of Louisiana has had to impose significant measures that will certainly have a negative economic impact on the state, resulting in financial hardship for the citizens of Louisiana regarding all matters related to all types of insurers and all kinds of insurance and also threatening access to adequate insurance coverage following an event of this magnitude when such insurance coverage is especially important. In order to respond to the ongoing emergency and to protect and safeguard the public health, safety, and welfare of the citizens of this state, it is necessary to issue Emergency Rule 45.

Title 37
INSURANCE

Part XI. Rules

Chapter 45. Emergency Rule 45—Suspension of Certain Statutes Regarding Cancellations, Terminations, Non-Renewals, and Nonreinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by the State of Emergency Declared by Governor John Bel Edwards on August 21, 2020, Due to Hurricane Laura

§4501. Benefits, Entitlements, Protections and Applicable Parishes

A. The benefits, entitlements and protections of Emergency Rule 45 shall be applicable to insureds, policyholders, members, subscribers, enrollees and certificate holders (hereinafter "insureds") who, as of 12:01 a.m. on August 27, 2020 have an insurance policy, insurance contract, or certificate of coverage for any of the kinds of insurance enumerated in §4503, as delineated below, and who meet one of the following criteria.

1. Any person who, as of August 27, 2020, resided in one of the following 16 parishes, to wit: Acadia; Allen; Beauregard; Calcasieu; Cameron; Grant; Jackson; Jefferson Davis; Lincoln; Natchitoches; Ouachita; Rapides; Sabine; Vermilion; Vernon; or Winn. Said person is entitled to the protections of Emergency Rule 45 for the kinds of insurance set forth in §4503.A and B.

2. For the kinds of insurance enumerated in §4503.B, any person whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one of the 16 parishes identified in §4501.A.1, shall be eligible for the benefits, entitlements and protections of Emergency Rule 45 if said person verifies such employment status by written documentation to his health insurance issuer. No health insurance issuer shall unreasonably withhold eligibility to insureds upon receipt of such written documentation.

3. For the kinds of insurance enumerated in §4503.A, any insured who does not reside in one of the 16 parishes enumerated in §4501.A.1, but has filed with an authorized insurer or surplus lines insurer a notice of loss on a property claim for damage caused by Hurricane Laura and its aftermath to property located in one of the 16 parishes enumerated in §4501.A, shall be entitled to contact the insurer and request the benefits, entitlements, and protections of Emergency Rule 45. These insurers are directed to work with their insureds who have filed a notice of loss on a property claim for damage caused by Hurricane Laura and its aftermath and provide accommodation as applicable, relevant and appropriate.

B. Emergency Rule 45 shall apply to any authorized insurer as defined in R.S. 22:46(3) operating in Louisiana, and to any approved unauthorized insurer, eligible

unauthorized insurer, or domestic surplus lines insurer as defined in R.S. 22:46(17.1) operating in Louisiana (sometimes hereinafter referred to as a surplus lines insurer).

C. Emergency Rule 45 shall apply to every health and accident insurer, health maintenance organization (HMO), managed care organization (MCO), preferred provider organization (PPO), pharmacy benefit manager (PBM), and third party administrator (TPA) acting on behalf of a health insurance issuer, HMO, MCO, PPO, and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana (collectively known as health insurance issuers).

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4503. Applicability and Scope

A. Emergency Rule 45 shall apply to any and all kinds of insurance set forth in R.S. 22:47, including, but not limited to, life, vehicle, liability, workers' compensation, burglary and forgery, fidelity, title, fire and allied lines, steam boiler and sprinkler leakage, crop, marine and transportation, miscellaneous, homeowners', credit life, credit health and accident, credit property and casualty, annuity, surety, and industrial fire. The applicability of Emergency Rule 45 to health and accident insurance is specified in §4503.B.

B. Emergency Rule 45 shall apply to any and all kinds of health and accident insurance, including, but not limited to, group and individual health and accident insurance, limited benefit insurance, Medicare supplement insurance, Medicare select insurance, HMOs, PPOs, MCOs except those subject only to licensure and financial solvency regulation pursuant to R.S. 22:1016, excess loss insurance, stop loss insurance, disability income insurance, short-term health insurance, long-term care insurance, and any and all other health insurance.

C. Emergency Rule 45, §4515 and §4527.B and C shall apply to only those kinds of insurance provided for in §4503.A and those types of insurers specified in §4501.B.

D. Emergency Rule 45, §4513, §4519, §4521, §4525, §4527.A, §4531, §4533, and §4535 shall apply only to those kinds of insurance provided for in §4503.B and those health insurance issuers specified in §4501.C.

E. All provisions of Emergency Rule 45 not expressly limited in §4503.C and D shall apply to all types of insurers and all kinds of insurance as defined in §4501 and §4503.

F. Nothing in §4503 shall be interpreted to apply the provisions of Emergency Rule 45 to policies of insurance issued for the benefit of insureds not subject to the benefits, entitlements, and protections enumerated in §4501.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4505. Cancellation, Nonrenewal, and Nonreinstatement

A. Emergency Rule 45 hereby suspends any notice of cancellation, notice of nonrenewal, nonreinstatement or any other notice related to any of the types of insurance enumerated in §4503 that was in force and effect at 12:01 a.m. on August 27, 2020, and any such notice shall be null and void and have no force of effect. Furthermore, any such notice shall be reissued de novo to the insured in accordance with existing statutory requirements after the expiration of Emergency Rule 45 as provided for in §4549.

B. Insurers may issue a notice of cancellation for non-payment of premium during the pendency of Emergency Rule 45. When any such notice is issued during the pendency of Emergency Rule 45, the applicable notice period required by statute or the policy may begin to run, but in no event may the insurer cancel the insurance policy for non-payment of premium until after the expiration of Emergency Rule 45.

C. No policy shall be cancelled or nonrenewed solely because of a claim that is filed during or is caused by Hurricane Laura or its aftermath.

D. Unless otherwise expressly authorized in writing by the commissioner, the cancellation, nonrenewal or nonreinstatement of any insurance policy related to any of the types of insurance enumerated in §4503 is hereby suspended and shall not be allowed until after the expiration of Emergency Rule 45 as provided for in §4549.

E. All cancellation, nonrenewal, or nonreinstatement provisions, including, but not limited to, R.S. 22:272, 22:887, 22:977, 22:978, 22:1068, 22:1074, 22:1266, 22:1267, and 22:1335 are hereby suspended, except to the extent such provisions apply to acts or practices constituting fraud or intentional misrepresentations of material fact.

F. As set forth in §4537, Emergency Rule 45 shall not prevent an insurer from cancelling or terminating an insurance policy for fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4507. Renewal

A. The renewal conditions of all kinds of insurance enumerated in §4503 that are subject to renewal after the effective date of Emergency Rule 45 are suspended and shall be deferred until the expiration of Emergency Rule 45 as provided for in §4549. All policies subject to renewal after the effective date of Emergency Rule 45 shall continue in full force and effect at the previously established premium until the expiration of Emergency Rule 45 as provided for in §4549. The previously established premium for renewals by authorized insurers shall be based on the rate structure, rating plan and manual rules that are approved by the Commissioner of Insurance, regardless of whether their effective date was before or during Emergency Rule 45. The previously established premium by authorized insurers for renewals of commercial deregulated insurance policies shall be based on the rate structure, rating plan and manual rules set forth in any filing submitted to the Commissioner of Insurance before or during Emergency Rule 45.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4509. Written Request for Cancellation by Insured

A. Except as provided for in §4537 herein, a cancellation shall not occur prior to the expiration of Emergency Rule 45 unless upon the documented written request or written concurrence of the insured. This written consent may be in electronic format.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4511. New Policies

A. Emergency Rule 45 shall not apply to any new insurance policy for any of the kinds of insurance enumerated in §4503 if said insurance policy is issued on or after August 27, 2020.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4513. Claims Notification

A. All claims notification procedures, including, but not limited to, R.S. 22:975(A)(3)-(5), Regulation 33, and Regulation 74, are suspended.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4515. Premium Offset

A. All insurers subject to Emergency Rule 45 receiving a claim from an insured owing a premium may offset the premium owed by the insured against any claim payment made to the insured under the insurance policy. This Section shall not apply to health insurance issuers as defined in §4501.C.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4517. Obligation of Insured to Pay Premium

A. Unless otherwise cancelled in accordance with the provisions of §4509 herein, nothing in Emergency Rule 45 shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

B. Those insureds entitled to the benefits, entitlements and protections of Emergency Rule 45 are advised that this suspension is not a waiver, but only an extension or grace period to facilitate your payment of the premium.

C. Insurers are directed to work with and assist their affected insureds who reside in the impacted parishes with the payment of the premium that would have become due during this moratorium period by either establishing for the insured a payment plan for the unpaid premium or providing to the insured a further extension for the payment of the unpaid premium.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4519. Timely Payment of Health Claims

A. Only to the extent necessary to permit the pending of claims during a premium payment delinquency by the insured, the provisions of R.S. 22:1832-1834 and Regulation 74 related to timely payment of claims are hereby suspended.

B. For any policy of insurance described in §4503.B which, as a result of nonpayment of premium, would be subject to cancellation or termination but for the suspension ordered in §4505, the health insurance issuer may pend all claims which would not have been denied under such cancellation or termination until the health insurance issuer receives the delinquent premium payment or until such time the health insurance issuer is subsequently entitled to cancel or terminate the policy for non-payment of premium.

C. Once a health insurance issuer receives the delinquent premium payment, all pending claims associated for the time period to which such payment applies shall be processed and adjudicated. The health insurance issuer shall notify the health care provider that the claim is no longer pending and is being processed and adjudicated for payment. Furthermore, the suspension provided for in §4519.A shall be automatically lifted and all applicable timely payment requirements reinstated upon the date of the payment of premium.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4521. Payment of Health Claims

A. In the event a health insurance issuer pends a claim, as permitted pursuant to §4519, and is subsequently entitled to cancel or terminate a policy for nonpayment of premium, the health insurance issuer shall pay that claim to the health care provider or health care profession at not less than the following rate or allowance:

1. for contracted health care providers or health care professionals, 50 percent of the contracted reimbursement rate;

2. for noncontracted health care providers or health care professionals, 50 percent of the non-participating rate or allowance;

3. with regard to claims submitted pursuant to this section, when the underlying policy is cancelled or terminated for nonpayment of premium, health insurance issuers shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are emergent, urgent, or necessary in order to not place the health of the insured at risk;

4. with regard to any and all claims paid by health insurance issuers pursuant to the requirements of this Section, the provisions of R.S. 22:1838 and 22:1859 are hereby suspended, and recoupment is prohibited.

B. This Section shall not apply to any claim otherwise compensable under any federal public law or appropriation made or adopted in response to the Hurricane Laura emergency, and subsequent guidance or regulations adopted by the U.S. Department of Homeland Security in furtherance

thereof. Health insurance issuers may seek recoupment of payment for such claims if otherwise permitted by law.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4523. Insureds Obligation to Cooperate in Claim Process

A. Emergency Rule 45 shall not relieve an insured who has a claim filed before or during the pendency of Emergency Rule 45 from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to the claim.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4525. Physician Credentialing

A. The commissioner hereby suspends physician credentialing pursuant to R.S. 22:1009 such that there are no credentialing requirements with regard to any and all licensed physicians who provide medical services to insureds identified in §4501.A or §4501.B between 12:01 a.m. on August 27, 2020 and the expiration of Emergency Rule 45 as provided for in §4549.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4527. New Rate or Premium

A. For all health insurance issuers specified in §4501.C, any rate increases that were to take effect after the effective date of Emergency Rule 45 are suspended and shall be deferred until the expiration of Emergency Rule 45 as provided for in §4549.

B. For all other insurers, as specified in §4501.B, Emergency Rule 45 shall not affect the right of any insurer to file for and/or implement a new rate or premium for any insurance policy for the types of insurance enumerated in §4003.A if the new rate or premium has been approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4529. Imposition of Interest, Penalty, or Other Charge

A. The commissioner hereby suspends the imposition of any interest, penalty, or other charge and declares that no interest, penalty, or other charge shall accrue or be assessed against any insured as the result of the suspensions ordered in Emergency Rule 45.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4531. Continuation of Health Coverage

A. The Commissioner hereby suspends R.S. 22:1046. In furtherance thereof, a health insurance issuer who has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on the day after the end the expiration of Emergency Rule 45 as provided for in §4549. This section is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees for the duration of Emergency Rule 45.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4533. Prescription Drug Coverage

A. Health insurance issuers shall allow insured individuals to obtain refills of their prescriptions even if the prescription was recently filled, consistent with approval from patients' health care providers and/or pharmacists. This provision does not apply to prescription drugs with a high likelihood of abuse, such as opioids that are restricted to seven-day prescriptions.

B. The commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions shall be mailed to an alternate address if requested by the insured.

C. All health insurance issuers shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4535. Telemedicine Access

A. Health insurance issuers shall waive any coverage limitations restricting telemedicine access to providers included within a plan's telemedicine network.

B. Health insurance issuers shall waive any requirement that the patient and provider have a prior relationship in order to have services delivered through telemedicine.

C. Health insurance issuers shall cover mental health services provided by telemedicine consultation to the same extent the services would be covered if provided through an in-person consultation. This shall not be interpreted to require coverage of telemedicine services that cannot be appropriately provided remotely.

D. Health insurance issuers shall waive any requirement limiting coverage to provider-to-provider consultations only and shall cover telemedicine consultations between a patient and a provider to the extent the same services would be covered if provided in person.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4537. Fraud or Material Misrepresentation

A. Emergency Rule 45 shall not prevent an insurer from cancelling or terminating an insurance policy for fraud or material misrepresentation on the part of the insured.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4539. Exemption from Compliance

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 45 upon the written request by the insurer setting forth in detail each and every reason for the exemption and then only if the commissioner determines that compliance with Emergency Rule 45 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4541. Sanctions for Violations

A. The commissioner retains the authority to enforce violations of Emergency Rule 45. Accordingly, any insurer enumerated in Emergency Rule 45 or any other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 45 shall be subject to regulatory action by the commissioner under any applicable provisions of the Louisiana Insurance Code.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4543. Sixty Day Period to Initiate Adjustment of Property Claims

A. In accordance with R.S. 22:1892(A)(3), Hurricane Laura and its aftermath qualifies as a catastrophic loss event that requires insurers to initiate loss adjustment of a property damage claim within 30 days after notification of loss by the insured claimant.

B. In furtherance of R.S. 22:1892(A)(3), the severity of the devastation caused by Hurricane Laura and its aftermath qualifies for an additional thirty (30) days for insurers to initiate loss adjustment of a property claim after notification of loss by the insured claimant.

C. Therefore, insurers shall have a total of 60 days to initiate loss adjustment of a property damage claim after notification of loss by the insured claimant.

D. This declaration is based on the representation that the additional time period is necessary due to the large volume of claims resulting directly from Hurricane Laura and its aftermath, and with the admonition that insurers will promptly identify, evaluate, and resolve these claims. Insurers must continue to provide timely service to their insured claimants by promptly acknowledging receipt of claims and making appropriate assignments for the adjustment of claims.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4545. Authority

A. The commissioner reserves the right to amend, modify, alter, extend, or rescind all or any portion of Emergency Rule 45.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4547. Severability Clause

A. If any section or provision of Emergency Rule 45 or its application to any person or circumstance is held invalid, such invalidity or determination shall not affect other section or provision or the application of Emergency Rule 45 to any person or circumstance that can be given effect without the invalid section or provision or application, and for these purposes the sections and provisions of Emergency Rule 45 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§4549. Effective Date

A. Emergency Rule 45 shall become effective at 12:01 a.m. on August 27, 2020 and shall continue in full force and effect until either 11:59 p.m. on October 24, 2020 or 11:59 p.m. on the cessation date of the governors transfer of authority to the commissioner presently in effect, inclusive of any renewal thereof, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-108, Proclamation JBE 2020-115, R.S. 22:2, R.S. 22:11, and R.S. 22:1961 et seq, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

James J. Donelon
Commissioner

2009#021

DECLARATION OF EMERGENCY

Board of Regents
Office of Student Financial Assistance

Scholarship/Grant Programs—2020 Regular Session of the Louisiana Legislature and TOPS 5.0 Grading Scale: AP Psychology (LAC 28:IV.509, 703, 705, 803, and 805)

The Louisiana Board of Regents is exercising the emergency provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) to amend the rules of the Scholarship/Grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1.1-3042.8, R.S. 17:5001 et seq., and R.S. 56:797.D(2)].

This rulemaking implements Act 225, Act 245, and (HB870) of the 2020 Regular Session of the Louisiana Legislature and adds AP Psychology as a course that may be graded on a 5.0 scale for high school graduates of 2018 and later.

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the

financial welfare of the eligible students and the financial condition of their families. The Board of Regents has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective August 13, 2020, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG21192ER)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 5. Applications, Federal Grant Aid and ACT Test
§509. ACT Testing Deadline

A.1. The student must take the official ACT test (including national, international, military or special test types) on or before the official April test date in the academic year (high school) in which the student graduates or completes a home study program approved by BESE.

2. A student may submit a request for exception to the deadline established in §509.A.1, which will be considered only under the following circumstances:

a. the student was prevented from taking the ACT test on or prior to the official April test date due to circumstances beyond his control and which are attributable to the administration of the test; and

b. the student achieves a qualifying score on or before August 1 of the year of the student's high school graduation.

c. the award for a student whose request for exception is approved under this Section shall not be reduced as set forth in §509.C.

d. except for an applicant who has qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS Award.

3. An eligible non-graduate must take the official ACT test (including national, international, military or special test types) before the first day of the semester the student first enrolls in an eligible college or university.

4.a. Applicable to 2020 graduates only, the final deadline for achieving a qualifying score on an official ACT test (including national, international, military or special test types) is September 30, 2020. A student may qualify for an initial award or a higher award based on such test. The award for a student who achieves a qualifying ACT score as provided in the Section shall not be reduced as set forth in §509.C.

b. The provisions of this Subsection shall apply to any student who:

i. was enrolled in a Louisiana public high school during the 2019-2020 academic year (high school);

ii. was enrolled in a nonpublic high school in Louisiana having the approval by the State Board of Elementary and Secondary Education required by Part I of this Chapter for program eligibility purposes during the 2019-2020 academic year (high school);

iii. resided in the state of Louisiana and was enrolled in a home study program approved by the State Board of Elementary and Secondary Education during the 2019-2020 academic year (high school); or

iv. resided out of state during the 2019-2020 academic year but who is able to meet the residency requirements to qualify for an award as provided for in §703.A.2.

B.1. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3031, R.S. 17:3042.1 and R.S. 17:5001 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 26:1995 (September 2000), amended LR 26:2000 (September 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), repromulgated LR 27:1847 (November 2001), amended LR 30:1161 (June 2004), LR 31:37 (January 2005), LR 38:3157 (December 2012), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:503 (March 2018), LR 44:1869 (October 2018), LR 46:

Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards
§703. Establishing Eligibility

A. - A.5.a.ii.(e). …

(f). For students graduating in academic year (high school) 2017-2018 and after, the courses listed in the tables below have been approved by the Board of Regents and the state Board of Elementary and Secondary Education to be converted to a 5.00 scale when used to complete the core curriculum, and shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a.

(i). Advanced Placement Courses

TOPS Core Course	Advanced Placement
Art	AP Art History AP Studio Art: 2-D Design AP Studio Art: 3-D Design AP Studio Art: Drawing
Biology II	AP Biology
Calculus	AP Calculus AB AP Calculus BC
Chemistry II	AP Chemistry
Chinese	AP Chinese Language and Culture
Economics	AP Macroeconomics AP Microeconomics
English III	AP English Language and Composition
English IV	AP English Literature and Composition
Environmental Science	AP Environmental Science
European History	AP European History
Fine Arts Survey	AP Music Theory
French	AP French Language and Culture
German	AP German Language and Culture
Italian	AP Italian Language and Culture
Japanese	AP Japanese Language and Culture
Latin	AP Latin
Physics I	AP Physics I: Algebra Based AP Physics II: Algebra Based AP Physics C: Electricity and Magnetism AP Physics C: Mechanics
Probability and Statistics	AP Statistics
Spanish	AP Spanish Language and Culture
US Government or Civics	AP U.S. Government and Politics: Comparative AP U.S. Government and Politics: United States

TOPS Core Course	Advanced Placement
US History	AP U.S. History
Western Civilization, European History or AP European History; World Geography, AP Human Geography, or IB Geography; World History, AP World History, or World History IB; History of Religion; IB Economics Economics, AP Macroeconomics AP Microeconomics	AP Psychology
World Geography	AP Human Geography
World History	AP World History

A.5.a.ii.(f)(ii). - B.2.b. …

3. under §703.A.5.a and b in academic year (high school) 2021-2022 must have attained a TOPS cumulative high school grade point average, based on a 4.00 maximum scale, of at least:

a. a 2.50 for the Opportunity Award; or

b. a 3.25 for the Performance Award; or

c. a 3.50 for the Honors Award;

B.4. - J.4.b.ii. …

K. Public Health Emergency Initial Eligibility Requirements

1. An affected student shall not be required to meet the home study requirements set forth in §703.A.5.d.i.-iii. if it is determined by the administering agency that the student's failure to meet the requirements was, more likely than not, due solely to consequences of measures taken to mitigate the public health emergency.

2. For purposes of this Subsection, an *affected student* is a student who:

a. was enrolled in a Louisiana public high school during the 2019-2020 academic year (high school);

b. was enrolled in a nonpublic high school in Louisiana having the approval by the State Board of Elementary and Secondary Education required by Part I of this Chapter for program eligibility purposes during the 2019-2020 academic year (high school);

c. resided in the state of Louisiana and was enrolled in a home study program approved by the State Board of Elementary and Secondary Education during the 2019-2020 academic year (high school); or

d. resided out of state during the 2019-2020 academic year but who is able to meet the residency requirements to qualify for an award as provided for in §703.A.2.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011), LR 38:354 (February 2012), LR 38:3158 (December 2012), LR 39:481 (March 2013), LR 39:2485 (September 2013), LR 40:54 (January 2014), LR 41:373 (February 2015), LR 41:651, 664 (April 2015), LR 41:1486 (August 2015), LR 41:2596, 2599 (December 2015), amended by the Board of Regents, Office of Student Financial Assistance, LR 42:1657 (October 2016), LR 42:1882 (November 2016), LR 43:518 (March 2017), LR 43:1346 (July 2017), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:506 (March 2018), LR 44:1004 (June 2018), LR 44:1870 (October 2018), LR 46:326 (March 2020), LR 46:

§705. Maintaining Eligibility

A. - E.3. …

F. Public Health Emergency Maintaining Eligibility Requirements

1. To continue receiving the TOPS Opportunity, Performance or Honors Awards, an affected student must meet all of the criteria in §705.A-D above, except as follows.

a. An affected student shall not be required to meet the minimum academic progress requirements set forth in §705.A.6.

b. An affected student shall not be required to meet the steady academic progress requirements set forth in §705.A.7.

c. An affected student shall not be required to meet the continuation GPA requirements set forth in §705.A.8.

d. The period of suspension of a TOPS Award for an affected student due to the student not meeting the requirement to maintain minimum academic progress or to make steady academic progress shall be extended on a one-for-one basis for each semester or term the student is unable to complete or in which the student does not enroll on a full-time basis due to measures taken to mitigate the public health emergency.

2. For the purposes of this Subsection, *affected student* shall mean:

a. a student who was enrolled full time as of the census date at an eligible college or university during the spring semester of 2020;

b. a student who was enrolled full time at an out-of-state college or university as of the census date during the spring semester of 2020; or

c. a student who was scheduled to be enrolled full time at a school operating on a basis other than semesters during the spring of 2020.

G.1. A student who successfully completes a baccalaureate degree without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in a graduate or professional school at an eligible college or university no later than the fall semester immediately following the first anniversary of the student's completion of an undergraduate degree and has met the requirements for continued eligibility set forth in §705.A.6. The remaining eligibility may not be used to pursue a second undergraduate degree.

2. Beginning with the 2012-2013 academic year (TOPS), a student who successfully completes any type of technical, vocational, or academic credential other than a baccalaureate degree without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in a program of study leading to a baccalaureate degree, to a vocational or technical certificate or diploma, or to a non-academic degree at an eligible college or university no later than the fall semester immediately following the first anniversary of the student's completion of an associate's degree and has met the requirements for continued eligibility set forth in §705.A.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3031, R.S. 17:3042.1, and R.S. 17:5001 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:437 (March 2007) , LR 34:1390 (July 2008), LR 36:491 (March 2010), LR 36:2856 (December 2010), LR 38:3159 (December 2012), LR 40:1002 (May 2014), LR 41:664 (April 2015), LR 42:47 (January 2016), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:520 (March 2018), LR 46:

Chapter 8. TOPS-Tech Award

§803. Establishing Eligibility

A. - B.4.b.ii. …

C. Public Health Emergency Initial Eligibility Requirements

1. An affected student shall not be required to meet the home study requirements set forth in §803.A.5.d.i.-iii. if it is determined by the administering agency that the student's failure to meet the requirements was, more likely than not, due solely to consequences of measures taken to mitigate the public health emergency.

2. An affected student who was pursuing the JumpStart core curriculum set forth in §803.A.6.a.ii. will not be required to complete any JumpStart course, experience, or credential that was waived by the student's high school for high school graduation purposes.

3. For purposes of this Subsection, an *affected student* is a student who:

a. was enrolled in a Louisiana public high school during the 2019-2020 academic year (high school);

b. was enrolled in a nonpublic high school in Louisiana having the approval by the State Board of Elementary and Secondary Education required by Part I of this Chapter for program eligibility purposes during the 2019-2020 academic year (high school);

c. resided in the state of Louisiana and was enrolled in a home study program approved by the State Board of Elementary and Secondary Education during the 2019-2020 academic year (high school); or

d. resided out of state during the 2019-2020 academic year but who is able to meet the residency requirements to qualify for an award as provided for in §803.A.2.

D. Military Veterans Initial Eligibility Requirements

1. Effective for the 2020-2021, 2021-2022, and 2022-2023 academic years, a veteran may qualify for a TOPS Tech Award in accordance with the provisions of this Subsection.

2. To qualify for an award under the provisions of this subsection, a veteran must:

a. submit a copy of his DD-214 evidencing that:

i. he was honorably discharged from a military installation in Louisiana;

ii. he served in a branch of the United States Armed Forces for a period of at least 3 years;

b. be a citizen of the United States;

c. have established domicile in Louisiana within one year of discharge from active duty, provided that such domicile was established on or after January 1, 2020;

e. submit a copy of his standardized test score(s) evidencing the following was achieved prior to high school graduation:

i. 17 on the ACT; or

ii. the equivalent concordant value to an ACT score of 17 on the SAT; or

iii. the Silver level score on the assessments of the ACT WorkKeys system;

f. have filed a free application for Federal Student Aid (FAFSA) no more than one year subsequent to discharge from active duty;

g. have enrolled full time in an eligible program of study no later than one year after notification of eligibility for a TOPS Tech Award under the provisions of this Subsection;

h. have no criminal conviction other than misdemeanor traffic violations.

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

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 36:491 (March 2010), LR 36:2270 (October 2010), LR 36:2856 (December 2010), LR 38:3159 (December 2012), LR 41:654 (April 2015), LR 41:2597 (December 2015), LR 42:48 (January 2016), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:523 (March 2018), amended LR 44:1874 (October 2018), LR 45:1172 (September 2019), LR 46:

§805. Maintaining Eligibility

A. - D.3. …

E. Public Health Emergency Maintaining Eligibility Requirements

1. To continue receiving the TOPS Tech Award, an affected student must meet all of the criteria in §805.A-C. above, except as follows.

a. An affected student shall not be required to meet the steady academic progress requirements set forth in §805.A.6.

b. An affected student shall not be required to meet the continuation GPA requirements set forth in §805.A.7.

c. An affected student shall not be required to meet the minimum academic progress requirements set forth in §805.A.8.

d. The period of suspension of a TOPS Tech Award for an affected student due to the student not meeting the requirement to maintain minimum academic progress or to make steady academic progress shall be extended on a one-for-one basis for each semester or term the student is unable to complete or in which the student does not enroll on a full-time basis due to measures taken to mitigate the public health emergency.

2. For the purposes of this Subsection, *affected student* shall mean:

a. a student who was enrolled full time as of the census date at an eligible college or university during the spring semester of 2020;

b. a student who was enrolled full time at an out-of-state college or university as of the census date during the spring semester of 2020; or

c. a student who was scheduled to be enrolled full time at a school operating on a basis other than semesters during the spring of 2020.

F. A student who successfully completes a vocational or technical certificate or diploma program or a non-academic degree program without having exhausted his period of award eligibility shall receive an award for the remainder of his eligibility if he enrolls in another program of study leading to a vocational or technical certificate or diploma or to a non-academic degree no later than the fall semester immediately following the first anniversary of the student's completion of a vocational or technical certificate or diploma program or of a non-academic degree program and has met the requirements for continued eligibility set forth in §805.A.

G. The provisions of §805.A, B, C and F shall be applicable to a veteran who qualifies for an initial program award under the provisions of §803.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3031, R.S. 17:3042.1 and R.S. 17:5001 et seq.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1905 (October 1998) amended LR 25:1091 (June 1999), LR 26:68 (January 2000), LR 26:689 (April 2000), LR 26:1997, 2002 (September 2000), repromulgated LR 27:1856 (November 2001), amended LR 28:774 (April 2002), LR 28:2332 (November 2002), LR 29:880 (June 2003), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1165 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:438 (March 2007), LR 35:1489 (August 2009), LR 38:3160 (December 2012), LR 40:1002 (May 2014), LR 41:666 (April 2015), LR 41:2598 (December 2015), LR 42:49 (January 2016), amended by the Board of Regents, Office of Student Financial Assistance, LR 44:527 (March 2018), LR 46:

Robyn Rhea Lively
Senior Attorney

2009#062

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
Uniform Construction Code Council

Uniform Construction Code—Storm Shelters
(LAC 17:I.Chapter 1)

The Department of Public Safety and Corrections, Office of State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) has exercised the emergency provision in accordance with R.S. 49:953(B) of the Administrative Procedure Act, to amend portions of and readopt LAC 17:I.Chapter 1 in the state Uniform Construction Code as authorized by R.S. 40:1730.26 and R.S. 40:1730.28. Furthermore, the LSUCCC has found an immediate need to amend the current building provisions in the International Building Code regarding health and safety for the public.

The LSUCCC is promulgating this Emergency Rule to amend the current rule so as to provide greater health and safety for the public and those providing installation of storm shelters. This Rule was first adopted and published in the January 2018 edition of the Louisiana Register (Vol. 44, No. 01). The Rule became effective on February 1, 2018. This Emergency Rule is being adopted to continue those provisions. By the signature of the agency head, Chief H. "Butch" Browning, Jr., it was adopted and became effective on September 2, 2020. It shall be in effect for the maximum period allowed under the Act (120 days) or until adoption of the final Rule, whichever occurs first.

The adoption of the 2015 International Building Code, Section 423, provides for storm shelter requirements in specific parishes in the northern region of the state. These requirements include the construction of new, or the construction of additions to, facilities for schools and essential services such as fire, police, EMS and 911 call centers. Many design professionals, school boards and essential services agencies were unaware of this requirement. They secured funding in their proposed budgets without this requirement being addressed in the plans and specifications. Bonds were secured for funding based on the older edition of the code, without the increased cost for storm shelters factored into the cost projections. Due to the increased cost not being provided for in the budgeting of new schools, essential services projects were being canceled or placed on indefinite hold until new funding could be secured. This Emergency Rule addresses this requirement by providing for a delay in the effective date for enforcement. This delay also allows for more public input into the implementation timeline and any needed amendments to this section of the International Building Code.

The public welfare dictates that these changes be implemented immediately through the adoption of the Emergency Rule to promote greater safety to existing facilities undergoing renovations and for new proposed facilities to include these storm shelter requirements in securing funding. The public welfare further dictates that

these changes are implemented immediately through the adoption of the Emergency Rule because of the health risks these amendments address. Adoption of this Emergency Rule will allow owners and developers to immediately use these new standards in expanding existing facilities or constructing new facilities. Adoption of this Emergency Rule will also provide proven methods for storm shelters and new technology which will ensure the health, safety and welfare of not only school age children but for the public as well.

Title 17

CONSTRUCTION

Part I. Uniform Construction Code

Chapter 1. Adoption of the Louisiana State Uniform Construction Code

§101. Louisiana State Uniform Construction Code (Formerly LAC 55:VI.301.A)

A. In accordance with the requirements set forth in R.S. 40:1730.28, effective February 1, 2018 the following is hereby adopted as an amendment to the Louisiana State Uniform Construction Code.

1. Projects submitted for permitting prior to January 1, 2020 shall not be required to comply with the 2015 IBC Section 423, Storm Shelters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 41:2380 (November 2015), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 42:1672 (October 2016), LR 44:75 (January 2018), LR 46:

Chief H. "Butch" Browning, Jr
State Fire Marshal

2009#015

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2020/2021 Oyster Season on Public Areas of Louisiana

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953, and under the authority of R.S. 56:433 and R.S. 56:435.1.1, notice is hereby given that the Wildlife and Fisheries Commission declare the 2020/2021 oyster season as follows:

The Hackberry Bay and Bay Junop Public Oyster Seed Reservations as described in R.S. 56:434, shall open for bedding purposes at one-half hour before sunrise on Monday, November 16, 2020, and shall close to the harvest of seed oysters for bedding purposes at one-half hour after sunset on Monday, November 16, 2020.

The Hackberry Bay and Bay Junop Public Oyster Seed Reservations shall open to the harvest of market oysters at one-half hour before sunrise on Tuesday, November 17, 2020, and shall close to the harvest of market oysters at one-half hour after sunset on Monday, November 23, 2020.

Calcasieu Lake Public Oyster Area as described in R.S. 56:435.1.1 shall open one-half hour before sunrise on Friday, October 30, 2020.

These actions shall not supersede public health closures.

During the 2020/2021 open oyster season, the following provisions shall be in effect:

1. Any vessel from which any person(s) takes or attempts to take oysters from the public oyster seed grounds and reservations described above shall be limited to a daily take not to exceed 25 sacks of oysters per vessel, except for Calcasieu Lake where the daily and possession limits on the West Cove shall not exceed 15 sacks of oysters per vessel, and 10 sacks of oysters per vessel on the East side of Calcasieu Lake. A sack of oysters for the purposes of this Declaration of Emergency shall be defined as the size described in R.S. 56:440. If sacks smaller than the size described in R.S. 56:440 are used, the daily harvest and possession limit shall be based on the number of sacks used, not the size of the sack or other measures. The daily take and possession limit shall not apply to vessels harvesting seed oysters for bedding purposes. The possession limit shall not apply to vessels operating under a valid Oyster Cargo Vessel Permit, and these vessels shall not harvest oysters.

2. All vessels harvesting on the open public oyster seed grounds on Monday, November 16, 2020 shall be harvesting seed oysters for bedding purposes only and shall not have sacks or other containers typically used to hold oysters on board the harvest vessel.

3. A vessel is limited to either harvesting market oysters for direct sale (sacking) or harvesting seed oysters for bedding purposes on any one day and is specifically prohibited from doing both.

4. If any person on a vessel takes or attempts to take oysters from the public oyster areas, seed grounds or reservations described above, all oysters contained on that vessel shall be deemed to have been taken from said seed ground or reservation from the time harvest begins until all oysters are off-loaded dockside.

5. The harvest of seed oysters from a public oyster seed ground or reservation shall be for the purpose of moving the live oyster resource. The removal of more than 15 percent of non-living reef material in bedding loads is prohibited. All vessels shall allow on-board inspection and sampling of seed oyster loads by LDWF biologists and/or agents.

6. All oysters harvested from public areas, seed grounds or reservations for the purpose of market shall be uncontaminated, sealed and not gaping as described in R.S. 56:433.

7. All oysters harvested from public areas, seed grounds or reservations for the purpose of market sales shall measure a minimum of 3 inches from hinge to bill as described in R.S. 56:433.

8. Prior to leaving public oyster areas, seed grounds or reservations with oysters harvested from said public oyster

areas, seed grounds or reservations, all oysters must be sacked, the number of sacks shall be recorded in a log book, and each sack shall be properly tagged.

9. All vessels located in public oyster areas, seed grounds or reservations during those times between one-half hour after sunset and one-half hour before sunrise, and during closed weekend days, shall have all oyster scrapers unshackled.

10. Harvesting in the public oyster areas will only be allowed Monday through Friday. No harvest from public oyster areas, seed grounds, or reservations shall be allowed on Saturdays and Sundays.

11. In Calcasieu Lake, oyster scrapers are prohibited. Oyster harvesting shall be limited to using hand tongs on vessels harvesting oysters, or collected by hand. Oyster tongs shall be made as a grasping device consisting of two pieces joined by a pivot or hinged like scissors used for picking up objects.

The following areas shall remain closed for the entire 2020/2021 oyster season:

1. The public oyster seed grounds and reservations, as described in Louisiana Administrative Code (LAC) 76:VII.507, LAC 76:VII.509, LAC 76:VII.511 and LAC 76:VII.513, including all areas east of Mississippi River, Louisiana Department of Health (LDH) Shellfish Harvest Areas 1, 2, 3, 4, 5, 6, 7, 8, and the Vermilion/East and West Cote Blanche Bay/Atchafalaya Bay Public Oyster Seed Grounds.

2. Lake Tambour, Lake Chien, Lake Felicity, Deep Lake and Barataria Bay Public Oyster Seed Grounds as described in LAC 76:VII:517.

3. The Little Lake Public Oyster Seed Grounds as described in LAC 76:VII.521.

4. Sister Lake Public Oyster Seed Reservations and Lake Mechant Public Oyster Seed Ground as described in R.S. 56:434.

5. The Sabine Lake Public Oyster Area as described in R.S. 56:435.1.

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to:

1. Close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered.

2. Adjust daily take and/or possession limits as biological or enforcement data indicate a need.

3. Adjust sacking-only areas and/or restrict the taking of seed oysters as biological or enforcement data indicate a need.

4. Reopen an area previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Prior to any action, the Secretary shall notify the Chairman of the Wildlife and Fisheries Commission of his intention to make any or all of the changes indicated above.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health for public health concerns.

William Hogan
Chairman

2008#020

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2020 Private Recreational Red Snapper Season Closure

Louisiana's private recreational red snapper season was previously set by the Louisiana Wildlife and Fisheries Commission at its regular meeting on May 7, 2020 to be open on weekends only (Friday, Saturday, and Sunday) including the Mondays of Memorial Day and Labor Day beginning on May 22, 2020. LA Creel data indicate that harvest rates are such that the state recreational allocation may be met or is projected to be reached, and a closure is warranted.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency 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 by the Commission at its regular meeting on May 7, 2020, the secretary hereby declares:

The season for the recreational harvest of red snapper in Federal and State waters off Louisiana will close at 12:01 a.m. on Thursday, August 13, 2020 and remain closed until further notice.

Any closure shall prohibit the possession and/or landing of red snapper in state waters, except for federally permitted charter boats or commercial Individual Fishing Quota holders operating under federal law during federally established seasons and rules for those vessels.

Jack Montoucet
Secretary

2009#003

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2020 Private Recreational Red Snapper Season Modification

Louisiana's private recreational red snapper season was previously set by the Wildlife and Fisheries Commission at its regular meeting on May 7, 2020 to be open on weekends only (Friday, Saturday, and Sunday) including the Mondays of Memorial Day and Labor Day beginning on May 22, 2020. The season was closed on August 13, 2020 until

further notice based upon LA Creel data that indicated harvest rates were such that the state recreational allocation would be met. LA Creel data now indicate that there is remaining allocation that can be fished, and a re-opening is warranted.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency 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 by the Commission at its regular meeting on May 7, 2020, the secretary hereby declares:

The season for the recreational harvest of red snapper in Federal and state waters off Louisiana will open at 12:01 a.m. on Friday, September 4, 2020 and remain open until 11:59 p.m. on Monday, September 7, 2020, at which time the season will close and remain closed until further notice.

Any closure shall prohibit the possession and/or landing of red snapper in state waters, except for federally permitted charter boats or commercial Individual Fishing Quota holders operating under federal law during federally established seasons and rules for those vessels.

Jack Montoucet
Secretary

2009#012

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

2020 Recreational Gray Triggerfish Season Re-Opening

Louisiana's private recreational gray triggerfish season was previously opened on March 1, 2020 and closed on May 2, 2020. The regional administrator of NOAA Fisheries has informed the secretary that the recreational season for gray triggerfish in the federal waters of the Gulf of Mexico will re-open at 12:01 a.m. on September 1, 2020. Data indicate that the 2020 recreational annual catch target of 217,100 pounds, that was previously projected to be met, has not been reached and the remaining quota is available for harvest.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency 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 by the commission in LAC 76:VII.335.G.5 to modify opening and closing dates of any commercial or recreational reef fish seasons in Louisiana state waters when he is informed by the regional administrator of NOAA fisheries that the seasons have been modified in adjacent federal waters, the secretary hereby declares:

The season for the recreational harvest of gray triggerfish in Louisiana state waters shall open at 12:01 a.m. on Tuesday, September 1, 2020 and shall remain open until 12:01 a.m. on October 26, 2020 and remain closed until the regularly scheduled opening of the 2021 season on March 1, 2021. Effective with this closure, no person shall recreationally harvest or possess gray triggerfish whether within or without Louisiana waters.

Jack Montoucet
Secretary

2009#013

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Delay in the Opening of Shrimp Season
in Portion of State Inside Waters

The secretary has been notified of recent biological data that could negatively impact the Louisiana commercial shrimp industry. The large abundance of juvenile white shrimp that have migrated into portions of state inside waters have rapidly increased. The opening of these state inside waters could be detrimental to the commercial industry as the possession count for white shrimp is currently 100 shrimp per pound and the opening of these waters could result in the increased mortality of sub-legal white shrimp. The Louisiana Department of Wildlife and Fisheries is responsible for managing, conserving, and promoting the wise utilization of Louisiana's renewable fisheries resources. The secretary has determined that the best way to ensure utilization of the resource is to keep these waters closed as it is necessary to protect developing white shrimp. The Secretary has determined that a delay in the opening of these remaining areas may improve that utilization rate.

In accordance with the emergency provisions of R.S. 49:953, the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close outside waters by zone each year as it deems appropriate upon inspection of and based upon technical and biological data which indicate that marketable shrimp, in sufficient quantities are available for harvest; and, a declaration of emergency adopted by the Wildlife and Fisheries Commission on August 6, 2020 which authorizes the Secretary of the Department of Wildlife and Fisheries to delay or advance these opening dates if biological and technical data indicate the need to do so, the Secretary hereby declares:

That the fall shrimp season opening in the portion of Shrimp Management Zone 1, known as the Biloxi Marsh, and the portion of Shrimp Management Zone 3, known as the Mermentau River, will be delayed. This portion of state inside waters, as described below, will open at 6:00 a.m. September 11, 2020:

1. Biloxi Marsh—from a point at the intersection of the eastern shore of the MRGO and the Shell Beach Cut at 29 degrees 51 minutes 29.40 seconds north latitude, 89 degrees 40 minutes 37.99 seconds west longitude; thence northerly to a point where Shell Beach Cut and the south shore of Lake Borgne intersect (29 degrees 52 minutes 00.35 seconds north latitude, 89 degrees 40 minutes 25.33 seconds west longitude); thence easterly and northerly following the southern shore of Lake Borgne and the western shore of the Biloxi Marsh to Pointe Aux Marchettes (29 degrees 59

minutes 26.87 seconds north latitude, 89 degrees 34 minutes 44.91 seconds west longitude); thence northeasterly to Malheureax Point (30 degrees 04 minutes 40.57 seconds north latitude, 89 degrees 28 minutes 46.59 seconds west longitude); thence southeasterly to a point on the western shore of Three-Mile Pass (30 degrees 03 minutes 00.00 seconds north latitude, 89 degrees 22 minutes 23.00 seconds west longitude); thence northeasterly to a point on Isle Au Pitre (30 degrees 09 minutes 20.50 seconds north latitude, 89 degrees 11 minutes 15.50 seconds west longitude), which is a point on the double–rig line as described in R.S. 56:495.1(A)2; thence southerly following the double rig line to where it intersects with the MRGO (29 degrees 40 minutes 40.11 seconds north latitude, 89 degrees 23 minutes 07.71 seconds west longitude); thence northwesterly along the eastern shore of the MRGO to the point of origin.

2. Mermentau River—from a point on the shrimp inside/outside line and the western shore of the Mermentau River at 29 degrees 43 minutes 46.14 seconds north latitude, 93 degrees 00 minutes 40.50 seconds west longitude; thence northerly following the western shore of the Mermentau River to its intersection with Catfish Locks 29 degrees 52 minutes 47.31 seconds north latitude, 92 degrees 50 minutes 57.25 seconds west longitude; thence southeasterly following Catfish Locks to its intersection with the eastern shore of the Mermentau River (29 degrees 51 minutes 44.20 seconds north latitude, 92 degrees 50 minutes 52.98 seconds west longitude); thence southerly following the eastern shore of the Mermentau River to the point where it intersects the shrimp inside/outside line (29 degrees 43 minutes 46.33 seconds north latitude, 93 degrees 00 minutes 31.71 seconds west longitude); thence westerly along the shrimp inside/outside line to the point of origin.

Biological staff will continue to monitor shrimp resources to determine if additional measures are needed. Notice of any opening, delay, or closing of a season by the Secretary will be made by public notice at least 72 hours prior to such action. The Secretary is further granted the authority to open any area, re-open any previously closed area, and to open and close special shrimp seasons in any portion of state waters.

Jack Montoucet
Secretary

2009#002

DECLARATION OF EMERGENCY

Workforce Commission
Office of Unemployment Insurance Administration

Employer Requirement to Provide Notification of the Availability of Unemployment Insurance Benefits to Each Employee at the Time of Separation (LAC 40:IV.381)

The Louisiana Workforce Commission (LWC) is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., to promulgate a Rule to address posting of information concerning the availability of unemployment insurance benefits to employees at the time of separation. This Emergency Rule is being adopted to continue in effect the provisions of the Emergency Rule adopted on April 23, 2020.

On January 31, 2020, the United States Department of Health and Human Services Secretary Alex A. Azar declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the coronavirus disease (COVID-19). The United States Centers for Disease Control and Prevention (CDC) has declared COVID-19 a worldwide pandemic due to its global effect. Furthermore, on March 13, 2020, President Donald Trump invoked the Stafford Act and declared a national emergency regarding the COVID-19 outbreak. COVID-19 has been detected in the State of Louisiana with a growing number of residents testing positive for the disease. There is reason to believe that COVID-19 may spread among the population by various means of exposure, therefore posing a significant risk of substantial harm to a large number of citizens.

This Emergency Rule is necessary to provide employers with guidance about posting information concerning the availability of unemployment compensation at the time of separation. A delay in promulgating this Rule would have an adverse impact on the LWC's eligibility for funding under the Families First Coronavirus Response Act, Public Law (Pub. L.) 116-127, specifically Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020. It is imperative that the LWC proceed expediently with this Rule because of the precarious position of the immense number of recently unemployed workers due to COVID-19, which is an imminent peril to public health, safety, and welfare that requires immediate action to provide benefits. Failure to adopt this Rule on an emergency basis may delay the receipt of unemployment benefits for those affected by COVID-19, and will result in the LWC failing to receive federal funding, which could imperil the unemployment insurance trust fund.

This Declaration of Emergency is effective August 20, 2020, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act, R.S. 49:953 (B)(1) et seq., or until adoption of the final Rule, whichever occurs first.

Title 40
LABOR AND EMPLOYMENT
Part IV. Employment Security
Chapter 3. Employment Security Law
§381. Employer Requirement to Provide Notification of the Availability of Unemployment Insurance Benefits to Each Individual Employee at the Time of Separation

A. Pursuant to R.S. 23:1621, employers are required to provide notification of the availability of Unemployment Insurance Benefits (UI). This Rule prescribes an additional requirement that employers shall notify each individual employee at the time of separation from employment of the following.

1. Employees may file a UI claim in the first week that employment stops or work hours are reduced.

2. Employees shall be informed that a UI claim may be filed by phone or online stating:

a. to file a UI claim by phone, call: 1-866-783-5567;

b. to file a UI claim online, visit: www.louisianaworks.net/hire;

c. if you have questions about the status of your UI claim, you can call the LWC at 866-783-5567 or visit www.louisianaworks.net/hire.

3. Employees shall be given the Louisiana Workforce Commission's toll free phone number and web address for filing and assistance with unemployment insurance claims.

4. Employees shall be informed of the need to provide the Louisiana Workforce Commission with the following information in order for the claim to be processed:

a. full legal name;

b. social security number; and

c. authorization to work (if not a U.S. Citizen or resident).

B. Employers can find a form containing this required information at www.laworks.net/downloads.

C. Employers shall convey this information at the time of separation. This information shall be provided to employees in writing either via flyer, letter, email, or text message.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1591, R.S. 23:1472(19)(a)(iii), R.S. 23:1621, and R.S. 36:310.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Unemployment Insurance Administration, LR 46:663 (May 2020), amended LR 46:

Ava M. Dejoie
Secretary

2009#001

Rules

RULE

Department of Children and Family Services
Economic Stability Section

Supplemental Nutritional Assistance Program (SNAP)
(LAC 67:III.Chapter 19, 2013, and 2111)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) has amended the *Louisiana Administrative Code* (LAC), Title 67, Part III Economic Stability.

Pursuant to the authority granted to the department by the Food and Nutrition Act of 2008 in accordance with federal regulations for the Supplemental Nutritional Assistance Program (SNAP) in 7 CFR 271 et seq., the department considers these amendments necessary to clarify or adopt rules that govern Economic Stability programs.

LAC 67:III, Subpart 3 Supplemental Nutritional Assistance Program (SNAP), Section 1938 has been amended to remove the requirement for mandatory participation in an Employment and Training Program, to update the disqualification periods for noncompliance with work requirements, and to remove whole household disqualifications. Section 1940 has been amended to update the 36-month time period and to maintain compliance with 7 CFR 273.24. Section 1941 has been amended to maintain compliance with 7 CFR 273.7. Section 1987 has been amended to maintain compliance with 7 CFR 273.2(j)(2). Section 1988 has been amended to maintain compliance with 7 CFR 273.11(r) and (s). Sections 1998, 2013, and 2111 have been amended to maintain compliance with 7 CFR 273.12(a)(1)(viii). This Rule is hereby adopted on the day of promulgation.

Title 67
SOCIAL SERVICES
Part III. Economic Stability
Subpart 3. Supplemental Nutritional Assistance Program (SNAP)
Chapter 19. Certification of Eligible Households
Subchapter G. Work Requirements
§1938. Work Registration Requirements

A. Each household member who is not exempt from work registration shall be registered for employment before certification and recertification as a condition of eligibility. At the time of application, the state agency shall explain to the applicant the consequences of violation of the work requirements.

1. No individual physically and mentally fit and between the ages of 16 and 60, is eligible to participate if that individual:

a. refuses without good cause to provide sufficient information to allow a determination of his/her employment status or job availability;

b. voluntarily and without good cause quits a job;

c. voluntarily and without good cause reduces his/her work effort (and, after the reduction, is working less than 30 hours a week);

d. fails at certification and recertification to register for employment; or

e. refuses without good cause to accept an offer of employment.

2. If it is determined that an individual has violated the work requirements without good cause, that individual shall be ineligible to participate in SNAP as follows:

a. first sanction—until failure to comply ceases or one month, whichever is longer;

b. second sanction—until failure to comply ceases or three months, whichever is longer;

c. third or subsequent sanction—until failure to comply ceases or six months, whichever is longer.

3. If any individual who violated the work requirement joins another household, that individual shall be considered an ineligible household member.

B. Determining Whether a Work Requirement Violation Occurred

1. When a household files an application for participation, or when a participating household reports the loss of a source of income, the DCFS shall determine whether any household member:

a. refused without good cause to provide sufficient information to allow a determination of his/her employment status or job availability;

b. voluntarily and without good cause quit a job;

c. voluntarily and without good cause reduced his/her work effort (and, after the reduction, is working less than 30 hours a week);

d. refused without good cause, at the time of recertification, to register for employment;

e. refused without good cause to accept an offer of employment.

2. Benefits shall not be delayed beyond the normal processing times pending the outcome of this determination. This provision applies only if the employment involved 30 hours or more per week or provided weekly earnings equivalent to the federal minimum wage multiplied by 30 hours; the violation occurred within 60 days prior to the date of application or anytime thereafter, and was without good cause. Terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a violation for purpose of this Section. An employee of the federal government, or of a state or local government who participates in a strike against such government, and is dismissed from his or her job because of participation in the strike, shall be considered to have violated the work requirements without good cause.

3. If an application for participation is filed in the last month of the disqualification period, the eligibility worker shall use the same application for the denial of benefits in the remaining month of disqualification and certification for any subsequent month(s) if all other eligibility criteria are met.

4. Upon a determination that a violation of the work requirements occurred, the DCFS shall determine if the violation was with good cause. If it is determined that good cause does not exist, the sanction will be imposed. The DCFS shall provide the household with a notice of ineligibility. The notice shall inform the household of the proposed period of disqualification; its right to reapply at the end of the disqualification; and of its right to a fair hearing.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:80 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 42:1651 (October 2016), LR 46:1218 (September 2020).

§1940. Work Participation Requirements for Able-Bodied Adults without Dependents

A. Individuals are ineligible to continue to receive SNAP benefits if, during the current 36-month fixed clock period they received SNAP benefits for at least 3 months (consecutive or otherwise) while that individual did not either:

1. work (including paid or unpaid) an average of 20 hours per week or participate in and comply with a program under Title 1 of the Workforce Innovation and Opportunity Act (WIOA), Trade Adjustment Assistance Act program, or employment and training program (other than a job search or job search training program) for an average of 20 hours per week;

2. participate in a combination of work and training as described in Paragraph A.1 of this Section for an average of 20 hours per week; or

3. participate in and comply with a workfare program.

B. An individual is exempt from this requirement if the individual is:

1. under age 18, or 50 years of age or older;

2. medically certified as physically or mentally unfit for employment;

3. residing in a SNAP household where a household member is under age 18, even if the household member who is under age 18 is not eligible to receive SNAP benefits;

4. pregnant; or

5. otherwise exempt from work registration requirements.

C. Individuals can regain eligibility for assistance.

1. Individuals denied eligibility under Subsection A of this Section can regain eligibility if during a 30-day period the individual:

a. works 80 hours or more, or participates in and complies with a Program under WIOA, Trade Adjustment Assistance Act Program, or Employment and Training Program (other than a job search or job search training program) for 80 hours or more; or

b. any combination of work and participation in a program identified in Subparagraph C.1.a. of this Section for a total of 80 hours or more; or

c. participates in and complies with a workfare program (under Section 20 of the Food and Nutrition Act of 2008 or a comparable state or local program) for 80 hours or more.

2. An individual who regained eligibility and who is no longer fulfilling the work requirement is eligible for three consecutive countable months one time during the 36-month fixed-clock period, starting on the date the individual first notifies the agency that he or she is no longer fulfilling the work requirement, unless the individual has been satisfying the work requirement by participating in a work, training, or workfare program, in which case the period starts on the date the agency notifies the individual that he or she is no longer meeting the work requirement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, 7 CFR 273.24, and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:81 (January 1997) amended LR 34:885 (May 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 42:1652 (October 2016), LR 46:1219 (September 2020).

§1941. Work Requirements of the SNAP Household

A. Persons losing exemption status due to any change in circumstances that are subject to the reporting requirements shall register for employment when the change is reported.

1. A person age 16 or 17 who is not head of household or who is attending school or enrolled in an employment training program on at least a half-time basis is exempt.

2. A household member subject to and complying with any work requirement under Title IV of the Social Security Act is also exempt.

B. Each household member who is not exempt must register for employment before certification and recertification. The department will explain to the applicant the pertinent work requirements, rights and responsibilities of work registered household members, and the consequences of failure to comply. A written statement of this will be given to each work registrant.

C. Employment and Training (E and T) Programs

1. The department submitted an Employment and Training Program Plan to the United States Department of Agriculture, Food and Nutrition Service (FNS) Dallas Regional Office and the FNS Office of Alexandria, Virginia. A copy of the plan is available for public inspection at the Supplemental Nutritional Assistance Program Office, 627 North Fourth Street, Baton Rouge, Louisiana 70802.

2. Work registrants shall:

a. respond to a request from the department or its designees for supplemental information regarding employment status or availability for work;

b. report to an employer to whom referred by the department or its designee if the potential employment meets the suitability requirements;

c. accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable state or federal minimum wage.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.7 (c) (2), P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:394 (July 1987), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:96 (February 1989), amended by the Department of Social Services, Office of Family Support, LR 18:748 (July 1992), LR 18:1268 (November 1992),

LR 23:81 (January 1997), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2528 (November 2010), LR 46:1219 (September 2020).

Subchapter J. Determining Household Eligibility and Benefit Levels

§1987. Categorical Eligibility for Certain Recipients

A. Households Considered Categorically Eligible

1. Households in which all members are recipients of benefits from the FITAP, STEP, KCSP, and/or SSI, shall be considered categorically eligible for SNAP.

2. Recipient includes an individual determined eligible for TANF or SSI benefits, but the benefits have not yet been paid.

3. Recipient shall also include a person determined eligible to receive zero benefits, i.e., a person whose benefits are being recouped or a TANF recipient whose benefits are less than $10 and therefore does not receive any cash benefits.

4. A household shall not be considered categorically eligible if:

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

b. any member of that household is disqualified for being a fleeing felon or a probation or parole violator or for being convicted as an adult of certain crimes after February 7, 2014, and not in compliance with the terms of their sentence. These crimes include:

i. aggravated sexual abuse under section 2241 of Title 18, United States Code;

ii. murder under section 1111 of Title 18, United States Code;

iii. an offense under chapter 110 of Title 18, United States Code;

iv. a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

v. an offense under state law determined by the attorney general to be substantially similar to an offense described in Clause A.4.b.i, ii, or iii of this Section.

c. the household was disqualified due to receipt of substantial lottery or gambling winnings equal to or greater than the elderly or disabled resource limit. If the household reapplies after losing eligibility due to these winnings, the household would not be considered categorically eligible and must meet the income and resource limit. The case would be processed under regular SNAP rules. This requirement only applies to the first time a household is certified following the loss of eligibility due to substantial lottery or gambling winnings.

5. The following persons shall not be considered a member of a household when determining categorical eligibility:

a. an ineligible alien;

b. an ineligible student;

c. an institutionalized person;

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

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

f. an individual who is on strike.

6. Households which are categorically eligible are considered to have met the following SNAP eligibility factors without additional verification:

a. resources;

b. Social Security numbers;

c. sponsored alien information;

d. residency.

7. These households also do not have to meet the gross and net income limits. If questionable, the factors used to determine categorical eligibility shall be verified.

8. Categorically eligible households must meet all SNAP eligibility factors except as outlined above.

9. Changes reported by categorically-eligible SNAP households shall be handled according to established procedures except in the areas of resources or other categorical eligibility factors.

10. Benefits for categorically-eligible households shall be based on net income as for any other household. One- and two-person households will receive a minimum benefit as required by 7 CFR 273.10(e)(2)(ii)(C). Households of three or more shall be denied if net income exceeds the level at which benefits are issued.

B. Application Processing

1. Households in which all members are applying for public assistance shall continue to be processed according to joint processing procedures. Until a determination is made on the public assistance application, the household's SNAP eligibility and benefit level shall be based on SNAP eligibility criteria. However, the local office shall postpone denying a potentially categorically-eligible household until the thirtieth day in case the household is determined eligible to receive public assistance benefits.

2. The household shall be informed on the notice of denial that it is required to notify the local office if its FITAP or SSI benefits are approved.

3. If the household is later determined eligible to receive public assistance benefits after the thirtieth day and is otherwise categorically eligible, benefits shall be provided using the original application along with other pertinent information occurring subsequent to the application.

4. The local office shall not reinterview the household but shall use any available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application re-signed by the authorized representative or authorized household member.

5. If eligibility for public assistance is determined within the 30-day SNAP processing time, benefits shall be provided back to the date of application. If eligibility for public assistance is determined after the SNAP application is denied, benefits for the initial month shall be prorated from the effective date of the public assistance certification or the date of the SNAP application, whichever is later.

C. Certified households which become categorically eligible due to receipt of SSI benefits shall be eligible for the medical and uncapped shelter deductions from the beginning of the period for which the SSI benefits are authorized or the date of the SNAP application, whichever is later. These additional benefits shall be provided through restoration.

D. For SNAP purposes, refugee cash assistance (RCA) benefits are not considered public assistance and, therefore, an RCA household is not categorically eligible.

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

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

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

b. any member of that household is disqualified for being a fleeing felon or a probation or parole violator or for being convicted as an adult of certain crimes after February 7, 2014, and not in compliance with the terms of their sentence. These crimes include:

i. aggravated sexual abuse under section 2241 of Title 18, United States Code;

ii. murder under section 1111 of Title 18, United States Code;

iii. an offense under chapter 110 of Title 18, United States Code;

iv. a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

v. an offense under state law determined by the attorney general to be substantially similar to an offense described in Clause A.4.b.i, ii, or iii of this Section.

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

a. an ineligible alien;

b. an ineligible student;

c. an institutionalized person;

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

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

f. an individual who is on strike.

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

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

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

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274, F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2, (j), and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2531 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:1312 (July 2014), LR 44:444 (March 2018), amended by the Department of Children and Family Services, Economic Stability Section, LR 45:1441 (October 2019), LR 46:1220 (September 2020).

§1988. Eligibility Disqualification of Certain Recipients

A. Fleeing felons and probation/parole violators are ineligible for benefits.

B. An individual convicted as an adult of certain crimes after February 7, 2014, and not in compliance with the terms of their sentence is ineligible for benefits. These crimes include:

1. aggravated sexual abuse under section 2241 of Title 18, United States Code;

2. murder under section 1111 of Title 18, United States Code;

3. an offense under chapter 110 of Title 18, United States Code;

4. a federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or

5. an offense under state law determined by the attorney general to be substantially similar to an offense described in Clause A.4.b.i, ii, or iii of this Section.

C. The household is disqualified due to receipt of substantial lottery or gambling winnings equal to or greater than the elderly or disabled resource limit.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:233.1, P.L. 105-33, and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 23:590 (May 1997), LR 23:1710 (December 1997), LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010), amended by Department of Children and Family Services, Economic Stability Section, LR 44:445 (March 2018), LR 46:1221 (September 2020).

Subchapter L. Reporting Changes

§1998. Reporting Requirements

A. Effective November 2009, all SNAP households are included in simplified reporting with the exception of households participating in the Louisiana Combined Application Project (LaCAP).

B. Simplified reporting households are required to report only:

1. changes in the household's gross monthly income which result in the household's income exceeding 130 percent of the monthly poverty income guideline for the household size;

2. changes in work or training hours of able-bodied adults without dependents (ABAWDs) who are subject to the time limit set forth in Section 1940 if the change results in the ABAWD working or participating in training an average of less than 20 hours per week; and

3. all SNAP households, including LaCAP and categorically eligible households, are required to report when a member of the household receives substantial lottery or gambling winnings equal to or exceeding the resource limit for elderly or disabled households won in a single game before taxes or other amounts are withheld. The winnings must be reported by the 10th of the month following the month the lottery or gambling winnings were won.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1486 (July 2004),

amended LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010), LR 46:1221 (September 2020).

Subchapter R. Simplified Reporting

§2013. Simplified Reporting

A. Effective November 2009, all SNAP households are included in simplified reporting with the exception of households participating in the Louisiana Combined Application Project (LaCAP).

B. Households subject to simplified reporting will be required to report only:

1. changes in gross monthly income which exceed 130 percent of the monthly poverty income guideline for the household size;

2. changes in work or training hours of able-bodied adults without dependents (ABAWDs) who are subject to the time limit set forth in §1940 if the change results in the ABAWD working or participating in training an average of less than 20 hours per week; and

3. all SNAP households, including LaCAP and categorically eligible households, are required to report when a member of the household receives substantial lottery or gambling winnings equal to or exceeding the resource limit for elderly or disabled households won in a single game before taxes or other amounts are withheld. The winnings must be reported by the 10th of the month following the month the lottery or gambling winnings were won.

C. Households included in simplified reporting will be assigned a certification period of 12 months.

D. All households in simplified reporting are required to:

1. timely provide a completed simplified report and all necessary verification; and

2. report current household circumstances.

E. Failure to provide a complete simplified report and verification will result in case closure.

F. Benefits will be determined prospectively based on verified circumstances.

G. Any change in benefits as a result of simplified reporting will be effective the month following the month in which the simplified report was required.

H. Effective August 7, 2001, other changes will be processed in accordance with §1999, Reduction or Termination of Benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a), P.L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:867 (June 2001), amended LR 28:103 (January 2002), LR 29:607 (April 2003), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010), LR 46:1222 (September 2020).

Chapter 21. Louisiana Combined Application Project (LaCAP)

Subchapter A. Household Concept

§2111. Change Reporting

A. Households participating in LaCAP must be allowed, to report changes in circumstances affecting their eligibility or benefit level.

B. Households participating in LaCAP are required to report when the household receives substantial lottery or gambling winnings equal to or exceeding the resource limit for elderly or disabled households won in a single game before taxes or other amounts are withheld. The winnings must be reported by the 10th of the month following the month the lottery or gambling winnings were won.

C. The agency must act on changes when it becomes aware of the change from the household or another source if the change affects the household's eligibility or benefit level.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2272 (December 2006), LR 46:1222 (September 2020).

Marketa Garner Walters
Secretary

2009#046

RULE

Tuition Trust Authority
Office of Student Financial Assistance

START Saving Program
(LAC 28:VI.107 and 315)

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.).

This rulemaking adds the applicable interest rates for the START Saving Program for the 2019 calendar year. It also amends the definition of Qualified Higher Education Expenses to align Louisiana START Saving Program Rules with Internal Revenue Code Section 529, as amended by the Setting Every Community Up for Retirement Enhancement (SECURE) Act. (ST20189R). This Rule is hereby adopted on the day of promulgation.

Title 28
EDUCATION
Part VI. Student Financial Assistance—Higher Education Savings

Chapter 1. General Provisions

§107. Applicable Definitions

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

* * *

Person—a human being or a juridical entity.

Qualified Education Loan—any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses:

a. which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred;

b. which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred; and

c. which are attributable to education furnished during a period during which the recipient was an eligible student.

Qualified Higher Education Expenses—

a. tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution; and

b. room and board; and

c. expenses for special needs services in the case of a special needs beneficiary, which are incurred in connection with such enrollment or attendance; and

d. for the calendar years 2009 and 2010 only, expenses paid or incurred for the purchase of any computer technology or equipment or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution, but shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominately educational in nature;

e. for calendar year 2015 and thereafter, expenses for the purchase of computer or peripheral equipment, computer software, or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution, but shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominately educational in nature.

f. for calendar year 2019 and thereafter, expenses for fees, books, supplies, and equipment required for the participation of the designated beneficiary in an apprenticeship program which is registered and certified with the United State Secretary of Labor under section 1 of the National Apprenticeship Act.

g. for calendar year 2019 and thereafter, a maximum of $10,000 per individual for the payment of principal and/or interest on a qualified education loan of the designated beneficiary or a sibling of the designated beneficiary.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 33:443 (March 2007), LR 34:1885 (September 2008), LR 35:1491 (August 2009), LR 38:3162 (December 2012), LR 42:1071 (July 2016), LR 44:1877 (October 2018), LR 46:1222 (September 2020).

Chapter 3. Education Savings Account

§315. Miscellaneous Provisions

A. - B.40. …

41. For the year ending December 31, 2019, the Louisiana Education Tuition and Savings Fund earned an interest rate of 2.19 percent.

42. For the year ending December 31, 2019, the Savings Enhancement Fund earned an interest rate of 2.27 percent.

C. - S.2. …

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:2238 (August 2013), LR 40:1926 (October 2014), LR 41:1487 (August 2015), LR 42:1082 (July 2016), LR 42:1658 (October 2016), LR 43:1731 (September 2017), LR 44:1888 (October 2018), LR 45:1177 (September 2019), LR 46:1223 (September 2020).

Robyn Rhea Lively
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2009#039

RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs and Criminal Investigations Division

Recovery Furnaces
(LAC 33:III.2301) (AQ388)

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.2301 (AQ388).

This Rule reduces the frequency of the performance tests required by LAC 33:III.2301.D.4.b.ii from annually to once every five years. This Rule also provides an exemption from the total reduced sulfur (TRS) limitations of LAC 33:III.2301.D.3 for recovery furnaces subject to 40 CFR 60 Subpart BBa (Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013). Finally, this Rule provides an exemption from the opacity standard of LAC 33:III.2301.D.4.a for recovery furnaces subject to 40 CFR 63 Subpart MM (National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills).

Currently, owners or operators of recovery furnaces located at pulp and paper mills are required to conduct annual performance tests to demonstrate compliance with the particulate matter (PM) limitation of LAC 33:III.2301.D.1.a (i.e., 4.0 pounds per equivalent pulp ton). These recovery furnaces are also subject to more stringent federal standards for PM under 40 CFR 63 Subpart MM and

the associated performance testing and monitoring requirements set forth therein. In order to reduce compliance costs for owners or operators of recovery furnaces, the frequency of the performance tests required by LAC 33:III.2301.D.4.b.ii will be reduced from annually to once every five years.

LAC 33:III.2301.E, promulgated on October 20, 2006, already provides an exemption from the TRS limitations of LAC 33:III.2301.D.3 for recovery furnaces subject to 40 CFR 60 Subpart BB (Standards of Performance for Kraft Pulp Mills). This Rule will expand this exemption to recovery furnaces subject to Subpart BBa, promulgated April 4, 2014. Like Subpart BB, Subpart BBa establishes TRS standards that are equivalent to or more stringent than those set forth in LAC 33:III.2301.D.3.

Likewise, 40 CFR 63 Subpart MM establishes opacity standards for recovery furnaces that are more stringent than that provided by LAC 33:III.2301.D.4.a. While the federal standards apply only to recovery furnaces equipped with an electrostatic precipitator (ESP), a determination of opacity from furnaces controlled using a wet scrubber or combination ESP/wet scrubber is generally not possible due the presence of uncombined water in the flue gas discharge. The basis and rationale for this Rule are to reduce compliance costs for owners or operators of recovery boilers obligated to comply with more stringent federal standards for PM and to provide exemptions from the TRS and opacity limitations of LAC 33:III.2301 for recovery boilers subject to equivalent or more stringent federal standards under 40 CFR 60 Subpart Bba and 40 CFR 63 Subpart MM, respectively. 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. This Rule is hereby adopted on the day of promulgation.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 23. Control of Emissions for Specific Industries[1]

[1]Regulation of emissions of volatile organic compounds for certain industries are presented in Chapter 21.

Subchapter A. Chemical Woodpulping Industry

§2301. Control of Emissions from the Chemical Woodpulping Industry

A. - D.3.b. …

4. Opacity Limitation

a. …

b. Compliance. Owners or operators shall conduct source tests of recovery furnaces pursuant to the provisions in LAC 33:III.1503.D, Table 4, to confirm particulate emissions are less than that specified in Paragraph D.1 of this Section. The results shall be submitted to the Office of Environmental Services as specified in LAC 33:III.919 and 918. The testing should be conducted as follows:

i. four tests at six month intervals within 24 months of initial startup; and

ii. one test every five years thereafter.

E. Exemptions

1. The TRS limitations of Paragraph D.3 of this Section do not apply to affected facilities subject to 40 CFR 60, Subpart BB—Standards of Performance for Kraft Pulp Mills, or 40 CFR 60, Subpart BBa—Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013.

2. The opacity limitation of Subparagraph D.4.a of this Section does not apply to affected sources subject to 40 CFR 63, Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

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 19:1564 (December 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2454 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2442 (October 2005), LR 32:1841 (October 2006), LR 33:2088 (October 2007), LR 34:1892 (September 2008), amended by the Office of the Secretary, Legal Division, LR 38:2753 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 46:1224 (September 2020).

Herman Robinson
General Counsel

2009#042

RULE

Department of Health
Board of Nursing

License and Continuing Education Renewal
(LAC 46:XLVII.3333 and 3355)

Louisiana State Board of Nursing has revised §§3333 and 3335. These revisions clarify the licensure renewal and continuing education processes. The changes in §3333 require the nurse to pay biennial licensure renewal fees. Previously, the LSBN required the nurse to pay renewal fees on an annual basis. The biennial renewal process does not apply to the licensees who hold an active RN multi-state license in a compact state other than Louisiana exercising their privilege to practice in Louisiana. Other minor changes to §3333 are as follows: change of name, change of address, delineation of on-line application(s), referencing §3335 for continuing education and inactive or retiring a license(s). A retired license is considered an inactive license, therefore individuals with a retired license are not authorized to practice. In §3335, the full-time and part-time nursing practice definitions have been removed and the inactive licensure status and the nursing practice definitions have been amended. Also, the continuing education nursing board approved contact hour changes from 15 hours to 30 hours in order to align with the biennial renewal. National Council of State Boards of Nursing (NCSBN) recognizes practice hours along with board approved contact hours; therefore, a minimum of 900 practice hours during the two-year licensure period as verified by the employer will be accepted as demonstration of competency. If the continuing education

requirements are not met, a warning will be issued for the first offense and the licensee may be prohibited from renewing his/her license for subsequent violations. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLVII. Nurses: Practical Nurses and Registered Nurses
Subpart 2. Registered Nurses
Chapter 33. General
Subchapter C. Registration and Registered Nurse Licensure

§3333. Renewal of License

A. Every person holding a license to practice as a RN and/or an APRN, and intending to practice during the ensuing year, shall renew his or her license biennially prior to the expiration of his or her license. This does not apply to licensees who hold an active RN multistate license in a compact state other than Louisiana exercising their privilege to practice. The board shall furnish an online, electronic application for renewal of a license which is accessible to every person who holds a current license. The licensee shall complete the renewal application during the active renewal season and before January 1. Upon completion of the application and submission of any supporting documentation and the renewal fee as required under §3341, the board shall verify the accuracy of the application and issue to the licensee a license of renewal for the current year beginning February 1 and expiring January 31. Incomplete applications will not be processed. Applications submitted after December 31 shall be considered late and are subject to the fee as required under §3341 for late renewals. Failure to renew a license prior to expiration shall result in an inactive license and subjects the individual to forfeiture of the right to practice. Falsification and/or failure to disclose information on the renewal application may result in disciplinary action. An individual shall notify the board of:

1. change of address which includes a physical address and email address. Notify the office of the board by submitting changes in the individual's online, electronic account within 30 days if a change of physical and/or email address has occurred;

2. change of name. If a registered nurse/candidate for registration should change his/her name through marriage, divorce, religious order, or for any other reason, a request for a change of name and supporting documentation shall be submitted electronically to the board. Supporting documentation includes a copy of the marriage certificate, divorce document, or affidavit confirming change of name, and is required to execute a name change on board records.

B. Requirements of the licensee for renewal of license include:

1. completion of the online, electronic application, including statistical information;

2. …

3. evidence of meeting the requirements regarding continuing education, in §3335 and

4. provide any/all information, documents, records, reports, evidence and/or items as requested by the board/board staff within 60 days from the date the application is submitted, or else the RN/APRN license shall be subject to immediate invalidation with change of status to inactive license and practice as a RN and/or APRN will no longer be legal.

C. An inactive or lapsed license may be reinstated by submitting a completed application, paying the required fee, and meeting all other relevant requirements, provided there is no evidence of violation of R.S. 37:911 et seq., §3331, or other administrative rules, or no allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 or §3405. Any person practicing as a RN or APRN during the time one's license is inactive or has lapsed is considered an illegal practitioner and is subject to the penalties provided for violation of this Part and will not be reinstated until the disciplinary action is resolved.

D. Licensees may submit an electronic application to inactivate or retire their license(s) at any time. A retired RN license is considered an inactive license. Individuals with a retired license are not authorized to practice.

1. A retired status license may be issued to any individual with an active unencumbered RN and/or APRN license who is not enrolled in an alternative to discipline program and is no longer engaged in the practice of nursing, provided said individual:

a. completes an application provided by the board prior to the expiration of the active license;

b. pays the required one-time fee as specified under §3341; and

c. has no pending investigation and/or pending formal disciplinary action for alleged violation(s) of the board's rules and /or regulations.

2. - 3 …

4. If at a future date, the licensee wishes to return to practice, the requirements for reinstatement including but not limited to those specified under §§3335.D, 4507.E.2, and/or 4507.F must be met.

5. …

6. After the RN license is placed in retired status, the APRN license may also be placed in retired or inactive status with no fee if requested.

7. The APRN license may be placed in retired or inactive status with no fee while the RN license remains active provided the provisions in §3335.D.1.a and c are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and 920.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 16:1061 (December 1990), LR 23:962 (August 1997), LR 23:963 (August 1997), repromulgated LR 24:1293 (July 1998), amended LR 26:1443 (July 2000), LR 32:247 (February 2006), LR 35:1536 (August 2009), LR 37:3026 (October 2011), amended by the Department of Health, Board of Nursing LR 46:1225 (September 2020).

§3335. Continuing Education—Nursing Practice

A. Authority of the Louisiana State Board of Nursing (board). The board derives its authority to establish the requirement for evidence of activities which contribute to continued competence for relicensure to practice as a RN from R.S. 37:911, R.S. 37:918(4) and (12), and R.S. 37:920.E (1), (2), and (4).

B. Definitions for the Purposes of §3335

* * *

Continuing Education Activities—

a. - c. …

* * *

Inactive Licensure Status—is recorded when the RN submits an application that is approved to inactivate a current RN license or is recorded when an individual declares another compact state, other than Louisiana, as the primary state of residence and holds an active multistate license in that other compact state with no discipline on the privilege to practice.

* * *

Nursing Practice—the performance, with or without compensation, by an individual licensed by the board or otherwise formally educated as a registered nurse, of functions requiring specialized knowledge and skill derived from the biological, physical, and behavioral sciences [Nurse Practice Act, R.S. 37:913 (13) and (14)], which includes, but is not limited to, direct patient care, supervision, teaching, administration, consulting, quality assurance, and other positions which require use of nursing knowledge, judgment, and skill.

Part Time Nursing Practice—Repealed.

* * *

C. …

1. License Renewal. For RN licensure renewal the applicant shall be in compliance with one of the following:

a. a minimum of 30 board-approved contact hours of continuing education during the two-year licensure period; or

b. a minimum of 900 practice hours during the two-year licensure period as verified by the employer on a form provided by the board; or

c. initial RN licensure by examination or by endorsement during the previous calendar year; or

d. current certification in a specialty area of nursing by a certifying body whose requirements have been approved by the board as being equivalent to or exceeding the above requirements.

2. - 2.d. …

e. The individual presents evidence of an emergency or extenuating circumstances. At the time of filing an application for relicensure based on an exception, the licensee shall attach documentation of the exception.

3. Penalty for Non-Compliance

a. Initial, first-time failure to comply with continuing education requirements will result in a warning and may prohibit the licensee from renewing the license if the required CE documents are not provided.

b. Subsequent failure(s) to comply with continuing education requirements shall result in disciplinary action.

c. Falsification of data on the renewal or audit forms may result in disciplinary action.

D. Reinstatement of License

1. For reinstatement of a license which has lapsed, been suspended, has been inactive, or has been retired, for less than four years, the applicant shall provide documentation of a minimum of 15 board-approved contact hours of continuing education for each year of inactive licensure status, or current licensure in another state and compliance with §3335.C.1.

2. For reinstatement of a license which has lapsed, been suspended, or has been inactive for four years or more and the applicant has not been actively engaged in the practice of nursing in another jurisdiction, the applicant shall provide documentation of one of the following:

a. …

b. enrollment and completion of a bonafide nursing course in an approved school, which consists of a minimum of 160 hours of instructor planned, supervised instruction, including theory and clinical practice, in lieu of a refresher course; or

c. individualized remediation as determined by the board including an assessment of needs, a program of study designed to meet these needs, and an evaluation of the learning outcomes of the program. Such program shall be sponsored by an approved provider in an accredited post-secondary educational institution whose faculty hold masters degrees in nursing; or

d. successful completion of the NCLEX-RN examination during the current or previous calendar year. (Licensees who choose the option of taking the NCLEX-RN shall complete the required application, pay the established fee, and follow the current process for testing.).

E. - E.3. …

4. review courses for certification in an approved area, such as ACLS, PALS, or advanced IV therapy,etc., provided they meet the criteria for approved offerings; and

E.5. - J.5. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:911, R.S. 37:918(4), (12), and R.S. 37:920.E.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 16:1058 (December 1990), amended LR 21:267 (March 1995), LR 21:804 (August 1995), LR 24:1293 (July 1998), LR 25:514 (March 1999), LR 26:83 (January 2000), LR 27:729 (May 2001), LR 34:440 (March 2008), amended by the Department of Health, Board of Nursing, LR 46:1225 (September 2020).

Dr. Karen Lyon
Executive Director

2009#063

RULE

Department of Health
Board of Pharmacy

Marijuana Pharmacy (LAC 46:LIII.2441, 2443, and 2451)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended three sections within Chapter 24 of its rules relative to marijuana pharmacy. The change in §2441 repeals the definition of marijuana which has changed since the Rule was promulgated in 2017. The change in §2443 repeals the limitation that a single container holds no more than a one-month supply of marijuana. The change in §2451 removes the limitation that marijuana pharmacies may sell only marijuana products, over-the-counter medications, durable medical equipment, and other retail

items. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 24. Limited Service Providers
Subchapter E. Marijuana Pharmacy
§2441. Definitions

A. As used in this Subchapter, the following terms shall have the meaning ascribed to them in this Section:

* * *

Marijuana–Repealed.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1538 (August 2017), amended LR 45:1473 (October 2019), amended LR 46:1227 (September 2020).

§2443. Marijuana Products

A. - D.1.a.iii …

b. Repealed.

D.1.c - E.4.f. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1540 (August 2017), amended LR 45:1473 (October 2019), amended LR 46:1227 (September 2020).

§2451. Operation of Marijuana Pharmacy

A. - M. …

N. No marijuana pharmacy shall acquire, possess or dispense any controlled substance other than medical marijuana products authorized by R.S. 40:1046.

O. - U. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1046.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Pharmacy, LR 43:1547 (August 2017), amended LR 46:1227 (September 2020).

Malcolm J Broussard
Executive Director

2009#007

RULE

Department of Health
Board of Pharmacy

Pharmacist License Display (LAC 46:LIII.505)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the Pharmacy Practice Act (R.S. 37:1161 et seq.), the Louisiana Board of Pharmacy has amended Section 505 of its rules to repeal the requirement for a pharmacist to publicly display a paper copy of their current license renewal. This Rule is hereby adopted on the day of promulgation.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 5. Pharmacists
Subchapter A. Licensure Procedures
§505. Licensure

A. The board shall issue a license upon payment of the appropriate fees when the board is satisfied the applicant is competent to practice pharmacy in the state.

1. Renewal. The board shall make the annual pharmacist license renewal application available to all currently licensed Louisiana pharmacists prior to November 1. The completed application along with the appropriate fee shall be submitted to the board by December 31 of each year. A renewal of licensure shall serve as proof of licensure and a pharmacist's license to practice pharmacy for that year of issuance.

1.a. - 2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), effective January 1, 1989, amended LR 29:2083 (October 2003), effective January 1, 2004, amended LR 33:1124 (June 2007), amended LR 38:1234 (May 2012), amended by the Department of Health, Board of Pharmacy, LR 46:1227 (September 2020).

Malcolm J Broussard
Executive Director

2009#006

RULE

Department of Health
Bureau of Health Services Financing

Dental Benefits Prepaid Ambulatory Health Plan
(LAC 50:1.Chapter 21)

The Department of Health, Bureau of Health Services Financing has amended LAC 50:I.Chapter 21 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. This Rule is hereby adopted on the day of promulgation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part 1. Administration
Subpart 3. Managed Care for Physical and Behavioral Health
Chapter 21. Dental Benefits Prepaid Ambulatory Health Plan
§2101. General Provisions

A. Effective May 1, 2014, the Department of Health, Bureau of Health Services Financing shall adopt provisions to establish a comprehensive system of delivery for dental

services covered under the Medicaid Program. The dental benefits plan shall be administered under the authority of a 1915(b) waiver by implementing a prepaid ambulatory health plan (PAHP) which shall be responsible for the necessary operational and administrative functions to ensure adequate service coordination and delivery.

B. All Medicaid recipients except those residing in intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) that are receiving dental services through the fee-for-service system will receive dental services administered by a dental benefit plan manager (DBPM).

1. The number of DBPMs shall be no more than required to meet the Medicaid enrollee capacity requirements and ensure choice for Medicaid 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 40:784 (April 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 46:1227 (September 2020).

§2103. Participation Requirements

A. ...

B. A DBPM must:

1. -5. ...

6. be without an actual or perceived conflict of interest that would interfere or give the appearance of impropriety or of interfering with the contractual duties and obligations under this contract or any other contract with LDH, and any and all applicable LDH written policies. Conflict of interest shall include, but is not limited to, the contractor serving, as the Medicaid fiscal intermediary contractor for LDH;

7. be awarded a contract with LDH, and successfully completed the readiness review prior to the start date of operations; and

B.8. - I.3. ...

AUTHORITY NOTE: Promulgated in 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 40:784 (April 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 46:1228 (September 2020).

§2105. Prepaid Ambulatory Health Plan Responsibilities

A. - A.1. ...

2. A DBPM shall possess the expertise and resources to ensure the delivery of dental benefits and services to members and to assist in the coordination of covered dental services, as specified in the terms of the contract.

3. A DBPM shall have written policies and procedures governing its operation as specified in the contract and department issued guidance.

4. A DBPM shall not discriminate against enrollees on the basis of race, gender, color, national origin, age, health status or need for dental services, and shall not use any policy or practice that has the effect of discriminating on any such basis.

5. The DBPM shall abide by all enrollment and disenrollment policy and procedures as outlined in the contract developed by the department.

B. The department will contract with an enrollment broker who will be responsible for the enrollment and disenrollment process for DBPM participants. The enrollment broker shall be:

1. the primary contact for enrollees regarding the DBPM enrollment and disenrollment process, and shall assist the recipient to enroll in a DBPM;

2. the only authorized entity, other than the department, to assist an enrollee recipient in the selection of a DBPM; and

3. responsible for notifying all DBPM members of their enrollment and disenrollment rights and responsibilities within the timeframe specified in the contract.

C. Enrollment Period. The annual enrollment of a DBPM member shall be for a period of up to 12 months from the date of enrollment, contingent upon his/her continued Medicaid eligibility. A member shall remain enrolled in the DBPM until:

1. LDH or its enrollment broker approves the member's written, electronic or oral request to disenroll or transfer to another DBPM for cause; or

2. the annual open enrollment period or after the lock-in period; or

3. the member becomes ineligible for Medicaid and/or the DBPM program.

D. Automatic Assignment Process

1. LDH shall establish an auto-assignment process for potential enrollees who do not request enrollment in a specified DBPM, or who cannot be enrolled into the requested DBPM for reasons including, but not limited to, the DBPM having reached its enrollment capacity limit or as a result of LDH-initiated sanctions.

2. DBPM automatic assignments shall take into consideration factors including, but not limited to:

a. assigning members of family units to the same DBPM. If multiple DBPM linkages exist within the household, the enrollee shall be enrolled to the DBPM of the youngest household enrollee;

b. existing provider-enrollee relationships; or

c. previous DBPM-enrollee relationship.

3. Auto-assignments on any basis other than household enrollment in DBPM will not be made to a DBPM whose enrollee share is at or above 60 percent of the total statewide membership.

E. Voluntary Selection of DBPM for New Enrollees

1. Potential enrollees shall be given an opportunity to choose a DBPM at the time of application. Once the potential enrollee is determined eligible, their choice of DBPM shall be transmitted to the enrollment broker.

2. During the 90 days following the date of the enrollee's initial enrollment into a DBPM, the enrollee shall be allowed to request disenrollment without cause by submitting an oral or written request to the enrollment broker.

3. All eligible enrollees shall be provided an annual open enrollment period at least once every 12 months thereafter.

4. All enrollees shall be given the opportunity to choose a DBPM at the start of a new DBPM contract either through the regularly scheduled open enrollment period or special enrollment period.

F. Annual Open Enrollment

1. The department will provide an opportunity for all DBPM members to retain or select a new DBPM during an annual open enrollment period. The enrollment broker will mail a re-enrollment offer prior to each annual enrollment period to the DBPM member. Each DBPM member shall receive information and the offer of assistance with making informed choices about the participating DBPMs and the availability of choice counseling.

2. The enrollment broker shall provide the individual with information on each DBPM from which they may select.

3. During the open enrollment period, each Medicaid enrollee shall be given 60 calendar days to either remain in their existing DBPM or select a new DBPM.

G. Selection or Automatic Assignment of a Primary Dental Provider for Mandatory Populations for All Covered Services

1. The DBPM is responsible to develop a primary dental provider (PDP) automatic assignment methodology in accordance with the department's requirements for the assignment of a PDP to an enrollee who:

a. does not make a PDP selection within 30 calendar days of enrollment to the DBPM;

c. selects a PDP within the DBPM that has reached their maximum physician/patient ratio; or

d. selects a PDP within the DBPM that has restrictions/limitations (e.g., pediatric only practice).

2. Assignment shall be made to a PDP with whom the enrollee has a provider-beneficiary relationship. If there is no provider-beneficiary relationship, the enrollee may be auto-assigned to a provider who is the assigned PDP for a household family member enrolled in the DBPM. If other household family members do not have an assigned PDP, auto-assignment shall be made to a provider with whom a family member has a provider-beneficiary relationship.

3. If there is no enrollee or household family provider-beneficiary relationship, enrollees shall be auto-assigned to a PDP, based on criteria such as age, geographic proximity, and spoken languages.

4. An enrollee shall be allowed to request at any time, verbally or in writing, to change his or her PDP and the DBPM must agree to grant the request.

H. Disenrollment and Change of Dental Benefit Plan Manager

1. An enrollee may request disenrollment from the DBPM as follows:

a. for cause, at any time. The following circumstances are cause for disenrollment:

i. the DBPM does not, because of moral or religious objections, cover the service the enrollee seeks;

ii. the enrollee needs related services to be performed at the same time; not all related services are available within the DBPM and the enrollee's PDP or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk;

iii. the contract between the DBPM and LDH is terminated;

iv. poor quality of care rendered by the DBPM as determined by LDH;

v. lack of access to DBPM covered services as determined by LDH; or

vi. any other reason deemed to be valid by LDH and/or its agent; or

b. without cause for the following reasons:

i. During the ninety 90 days following the date of the beneficiary's initial enrollment into the DBPM or during the 90 days following the date the enrollment broker sends the beneficiary notice of that enrollment, whichever is later;

ii. upon automatic re-enrollment under 42 CFR §438.56(g), if a temporary loss of Medicaid eligibility has caused the beneficiary to miss the annual open enrollment opportunity;

iii. when LDH imposes the intermediate sanction provisions specified in 42 CFR §438.702(a)(3); or

iv. after LDH notifies the DBPM that it intends to terminate the contract as provided by 42 CFR §438.722.

I. Involuntary Disenrollment

1. The DBPM may request involuntary disenrollment of an enrollee if the enrollee's utilization of services constitutes fraud, waste, and/or abuse such as misusing or loaning the enrollee's ID card to another person to obtain services. In such case the DBPM shall report the event to LDH and the Medicaid Fraud Control Unit (MFCU).

2. The DBPM shall submit disenrollment requests to the enrollment broker, in a format and manner to be determined by LDH.

3. The DBPM shall ensure that involuntary disenrollment documents are maintained in an identifiable enrollee record.

4. The DBPM shall not request disenrollment because of an adverse change in physical or mental health status or because of the enrollee's health diagnosis, utilization of medical services, diminished mental capacity, preexisting medical condition, refusal of medical care or diagnostic testing, attempt to exercise his/her rights under the DBPM's grievance system, or attempt to exercise his/her right to change, for cause, the primary care provider that he/she has chosen or been assigned. Further, in accordance with 42 CFR §438.56, the DBPM shall not request disenrollment because of an enrollee's uncooperative or disruptive behavior resulting from his or her special needs, except when his or her continued enrollment seriously impairs the DBPM's ability to furnish services to either this particular enrollee or other enrollees.

5. The DBPM shall not request disenrollment for reasons other than those stated in the contract with LDH. In accordance with 42 CFR §438.56(b)(3), LDH shall ensure that the DBPM is not requesting disenrollment for other reasons by reviewing and rendering decisions on all disenrollment request forms submitted to the enrollment broker.

6. All disenrollment requests shall be reviewed on a case-by-case basis and the final decision is at the sole discretion of LDH or its designee. All decisions are final and not subject to the dispute resolution process by the DBPM.

7. When the DBPM's request for involuntary disenrollment is approved by LDH, the DBPM shall notify the enrollee in writing of the requested disenrollment. The notice shall include:

a. the reason for the disenrollment;

b. the effective date;

c. an instruction that the enrollee choose a new DBPM; and

d. a statement that if the enrollee disagrees with the decision to disenroll, the enrollee has a right to submit a request for a state fair hearing.

8. Until the enrollee is disenrolled by the enrollment broker, the DBPM shall continue to be responsible for the provision of all DBPM covered services to the enrollee.

J. A DBPM shall be required to provide service authorization, referrals, coordination, and/or assistance in scheduling the covered dental services as specified in the terms of the contract.

1. - 2. Repealed.

K. The DBPM shall establish and implement a quality assessment and performance improvement program as specified in the terms of the contract and department issued guidance.

L. A DBPM shall develop and maintain a utilization management program including policies and procedures with defined structures and processes as specified in the terms of the contract and department issued guides.

M. The DBPM must have administrative and management arrangements or procedures, including a mandatory compliance plan, that are designed to guard against fraud and abuse. The DBPM shall comply with all state and federal laws and regulations relating to fraud, abuse, and waste in the Medicaid programs as well all requirements set forth in the contract and department issued guidance.

1. - 1b. Repealed.

N. A DBPM shall collect data on enrollees and provider characteristics and on services furnished to members through an encounter data system as specified in the contract and all department issued guidance.

1. - 8. Repealed.

O. A DBPM shall be responsible for conducting routine provider monitoring to ensure:

1. continued access to dental care for eligible Medicaid recipients; and

2. compliance with departmental and contract requirements.

3. - 16. Repealed.

P. A DBPM shall not engage the services of a provider who is in non-payment status with the department or is excluded from participation in federal health care programs (i.e., Medicare, Medicaid, CHIP, etc.).

1. - 2. Repealed.

Q. Dental records shall be maintained in accordance with the terms and conditions of the contract. These records shall be safeguarded in such a manner as to protect confidentiality and avoid inappropriate disclosure according to federal and state law.

R. The DBPM shall provide both member and provider services in accordance with the terms of the contract and department issued guides.

1. The DBPM shall submit provider manuals and provider directory to the department for approval prior to distribution, annually and subsequent to any revisions.

a. The DBPM must provide a minimum of 60 days' notice to the department of any proposed material changes to the member handbooks and/or provider manuals.

b. After approval has been received from the department, the DBPM must provide a minimum of 30 days' notice to the members and/or providers of any proposed material changes to the required member education materials and/or provider manuals.

S. Member education materials shall include, but not be limited to:

1. a welcome packet including, but not limited to:

a. a welcome letter highlighting major program features and contact information for the DBPM; and

b. a provider directory when specifically requested by the member (also must be available in searchable format on-line);

2. member rights and protections as specified in 42 CFR §438.100 and the DBPM's contract with the department including, but not limited to:

a. a member's right to change providers within the DBPM;

b. any restrictions on the member's freedom of choice among DBPM providers; and

c. a member's right to refuse to undergo any dental service, diagnoses, or treatment or to accept any service provided by the DBPM if the member objects (or in the case of a child, if the parent or guardian objects) on religious grounds;

3. member responsibilities, appropriate and inappropriate behavior, and any other information deemed essential by the DBPM or the department including, but not limited to reporting to the department's Medicaid Customer Service Unit if the member has or obtains another health insurance policy, including employer sponsored insurance; and

4. the amount, duration, and scope of benefits available under the DBPM's contract with the department in sufficient detail to ensure that members understand the benefits to which they are entitled, including, but not limited to:

a. information about oral health education and promotion programs;

b. the procedures for obtaining benefits, including prior authorization requirements and benefit limits;

c. how members may obtain benefits, including emergency services, from out-of-network providers;

d. the policy on referrals for specialty care; and

e. the extent to which, and how, after-hour services are provided;

5. information to call the Medicaid Customer Service Unit toll-free telephone number or visit a local Medicaid eligibility office to report changes in parish of residence, mailing address or family size changes;

6. a description of the DBPM's member services and the toll-free telephone number, fax telephone number, e-mail address and mailing address to contact DBPM's member services department;

7. instructions on how to request multi-lingual interpretation and translation services when needed at no cost to the member. This information shall be included in all versions of the handbook in English, Spanish and Vietnamese; and

8. grievance, appeal and state fair hearing procedures and time frames as described in 42 CFR §438.400 through §438.424 and in the DBPM's contract with the department.

T. The provider manual shall include but not be limited to:

1. description of the DBPM;

2. core dental benefits and services the DBPM must provide;

3. emergency dental service responsibilities;

4. policies and procedures that cover the provider complaint system. This information shall include, but not be limited to:

a. specific instructions regarding how to contact the DBPM to file a provider complaint; and

b. which individual(s) has the authority to review a provider complaint;

5. information about the DBPM's grievance system, that the provider may file a grievance or appeal on behalf of the member with the member's written consent, the time frames and requirements, the availability of assistance in filing, the toll-free telephone numbers and the member's right to request continuation of services while utilizing the grievance system;

6. medical necessity standards as defined by LDH and practice guidelines;

7. practice protocols, including guidelines pertaining to the treatment of chronic and complex conditions;

8. primary care dentist responsibilities;

9. other provider responsibilities under the subcontract with the DBPM;

10. prior authorization and referral procedures;

11. dental records standards;

12. claims submission protocols and standards, including instructions and all information necessary for a clean and complete claim and samples of clean and complete claims;

13. DBPM prompt pay requirements;

14. notice that provider complaints regarding claims payment shall be sent to the DBPM;

15. quality performance requirements; and

16. provider rights and responsibilities.

U. The provider directory for members shall be developed in two formats:

1. a hard copy directory for members and, upon request, potential members; and

2. a web-based online directory for members and the public.

AUTHORITY NOTE: Promulgated in 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 40:784 (April 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 46:1228 (September 2020).

§2109. Benefits and Services

A. - D. ...

E. Utilization Management

1. The DBPM shall develop and maintain policies and procedures with defined structures and processes for a utilization management (UM) program that incorporates utilization review and service authorization, which include, at minimum, procedures to evaluate medical necessity and the process used to review and approve the provision of dental services. The DBPM shall submit an electronic copy of the UM policies and procedures to LDH for written approval within thirty calendar days from the date the contract is signed by the DBPM, but no later than prior to the readiness review, annually thereafter, and prior to any revisions.

2. - 10. ...

11. The DBPM shall submit written policies and processes for LDH approval, within thirty calendar days, but no later than prior to the readiness review, of the contract signed by the DBPM, on how the core dental benefits and services the DBPM provides ensure:

11.a. - 17. ...

18. The DBPM shall report fraud and abuse information identified through the UM program to LDH's Program Integrity Unit.

19. - 19.g. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:786 (April 2014), amended by the Department of Health, Bureau of Health Services Financing, LR46:1231 (September 2020).

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.

Dr. Courtney N. Phillips
Secretary

2009#061

RULE

Department of Natural Resources
Office of Conservation

Statewide Order No. 29-B—Disposal of
E and P Wastes by Slurry Fracture Injection
(LAC 43:XIX.433)

The Department of Natural Resources, Office of Conservation has amended LAC 43:XIX, Subpart 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The amendment updates the language in existing Slurry Fracture Injection regulations to prevent any potential wording conflict in LAC 43:XIX.433.J.6 (433.J.6) with ACT 191 of 2018 for "hours of operation" by removing reference to "injection occurring only during daylight hours" in 433.J.6. This Rule is hereby adopted on the day of promulgation.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 4. Pollution Control (Class II Injection/Disposal Well Regulations)

§433. Disposal of E and P Wastes by Slurry Fracture Injection

A. - J.5. …

6. Injection is to be conducted on a cyclic basis.

J.7. - L.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 27:1921 (November 2001), amended LR 46:1231 (September 2020).

Richard P. Ieyoub
Commissioner

2009#004

RULE

Office of the Governor
Board of Pardons and Committee on Parole

Panel Action (LAC 22:XI.511)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons and Parole has amended LAC 22:XI.511. The below changes expand the ability of the board to conduct single member interviews with offenders at parish jails or parish correctional centers and also to conduct hearings in absentia when the offender is unable to appear before the board due to a medical condition. This Rule is hereby adopted on the day of promulgation.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XI. Committee on Parole
Chapter 5. Meetings and Hearings of the Committee on Parole
§511. Panel Action

A. - B.2.d. …

C. Offenders incarcerated in a parish jail or parish correctional center may be interviewed by a single member of the Committee on Parole prior to a public parole hearing. The interviewing member will then present the case to the full parole panel for parole release consideration during the public parole hearing. Due to transport considerations, the offender will not be present during the public hearing. However, the public hearing will be conducted in a manner which allows for observation and input by members of the public.

D. Generally, public hearings shall be conducted via videoconferencing, with the committee members participating from the committee's headquarters in Baton Rouge, and offenders appearing before the committee via videoconferencing at the designated prison facility.

1. In the event the offender is unable to appear before the board due to a medical condition, a medical professional shall be made available to the parole panel to provide information about the offender's medical condition. The hearing will occur in absentia. (§511.B.2.a. if offender being considered for medical parole is housed in a medical treatment facility).

2. In the case of videoconferencing, the family, friends, and attorney of the offender shall be at the location of the offender.

3. In the case of videoconferencing, the victim(s) may be at the location of the committee or may participate by telephone through the local district attorney's victim advocacy representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and RS. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:57 (January 2014), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:45 (January 2015), LR 46:1232 (September 2020).

Sheryl M. Ranatza
Board Chair

2009#009

RULE

Department of Public Safety and Corrections
Office of State Police

Issuance of Concealed Handgun Permits
(LAC 55:I.1307)

In accordance with the provisions of R.S. 40:1379.1 relative to the authority of Department of Public Safety and Corrections to promulgate and enforce rules pursuant to the issuance of concealed handgun permits, Department of Public Safety and Corrections, Office of State Police has amended rules under Title 55 Part I §1307 in relation to the alternative submission of online applications by online or electronic certification in lieu of a sworn and notarized paper submission. This Rule is hereby adopted on the day of promulgation.

Title 55
Public Safety
Part I. State Police
Chapter 13. Issuance of Concealed Handgun Permits
§1307. Applications and Permit

A. - B.14.e. …

15. When an application is submitted online, any document otherwise required to be subscribed or acknowledged before a notary public shall include an online certification in accordance with R.S. 9:2621 in lieu of the notarized sworn subscription or acknowledgement.

C. - D.5. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379.1, 40:1379.3, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:846 (September 1996), amended LR 28:1483 (June 2002), LR 38:1281 (May 2012), repromulgated LR 38:1415 (June 2012), amended LR 43:673 (April 2017), LR 45:583 (April 2019), LR 46:1232 (September 2020).

Lt. Col. Jason Starnes
Chief Administrative Officer

2009#030

RULE

Department of State
Business Services Division

Business Entities
(LAC 19:V.Chapters 1-13)

The Department of State, Business Services Division, pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 49:222 and R.S. 36:742 has adopted a rule to authorize the use of an optional commercial application programming interface (API), which will allow customers, such as banks, service companies and government agencies doing enforcement activities to subscribe to a API subscription service that will allow them to search for business entity filings using their back-end systems. This Rule is hereby adopted on the day of promulgation.

Title 19
CORPORATIONS AND BUSINESS
Part V. Secretary of State

Chapter 1. Domestic Corporations

§102. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1233 (September 2020).

Chapter 5. Nonprofit Corporations

§502. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:1233 (September 2020).

Chapter 7. Foreign Corporations

§702. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of

state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1233 (September 2020).

Chapter 9. Special Corporations

§902. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1234 (September 2020).

Chapter 11. Limited Liability Companies

§1102. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:1234 (September 2020).

Chapter 13. Partnerships

§1302. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account, without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1234 (September 2020).

Steve Hawkland
Deputy General Counsel

2009#024

RULE

Department of Transportation and Development
Office of Public Works

Flood Control and Water Management
(LAC 56:III.Chapters 3 and 5)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 38:90.1 et seq., the Department of Transportation and Development, Office of Public Works, has amended Part III, Chapters 3 and 5, of Title 56 entitled "Statewide Flood Control Program" and "Funding Applications," respectively, to help manage the Statewide Flood Control Program participation, as well as to create the rules to implement the Rural Grant Opportunity. This Rule is hereby adopted on the day of promulgation.

Title 56
PUBLIC WORKS
Part III. Flood Control and Water Management
Subpart 1. Water Resources and Flood Control
Chapter 3. Statewide Flood Control Program
Subchapter A. Procedures for Implementing Statewide Flood Control Program

§301. Sequence

A. This Section describes the sequence of events involved in implementing the Statewide Flood Control Program. The sequence begins and ends each year during the Regular Session of the Legislature. Specific procedures are described briefly in this Section and are presented more fully in the pre-application, application, and evaluation of proposed projects and distribution of funds sections of this document.

1. Pre-Application and Resolution. Sponsoring authorities are to complete the pre-application, and must submit their completed pre-applications and resolutions to the Department of Transportation and Development, Office of Engineering, Public Works and Water Resources (DOTD) not later than 4 p.m. on May 1. Pre-applications received after May 1 will not be eligible for the program in the current year, but will be eligible for review during the next year. Pre-applications must include documentation of the flooding problem in order to be considered.

2. Evaluation Committee Review of Pre-Applications (May 1-June 1)

a. Pre-applications will be reviewed and screened by the Evaluation Committee. The reasons for the review are to determine whether there is documented evidence of flood damages; whether the sponsoring authority is requesting DOTD assistance in preparing the full application; whether the proposed solution (if such a solution has been developed at this time) is eligible for funding under this program; and whether the sponsoring authority is willing to assume responsibility for its share of the cost, including new rights-of-way, operation and maintenance costs, and other obligations, within 4 years of acceptance into the program.

b. Ineligible projects under this program will include those which:

i. do not reduce existing flood damages;

ii. encourage additional development of flood prone areas;

iii. increase the likelihood of upstream, downstream, or adjacent flood problems;

iv. have a total construction cost of less than $100,000; or

v. primary purpose is to provide protection against coastal storm surges.

c. All pre-applications that are determined to be ineligible by the Evaluation Committee will be returned with appropriate comments by June 1. All eligible pre-applications will remain on file until a formal application is submitted or for a period of four subsequent funding years. The pre-application evaluation criteria for DOTD assistance are described in the Pre-Application Section.

d. Pre-applications that have been determined to be eligible and that may move on to the application stage include:

i. pre-applications submitted by sponsoring authorities with a population of more than 50,000;

ii. pre-applications from sponsoring authorities to receive assistance from DOTD in the application stage;

iii. pre-applications from sponsoring authorities eligible for assistance from DOTD in the application stage that cannot be handled by DOTD in time for the current funding year that chose to prepare their own applications.

iv. pre-applications from sponsoring authorities seeking participation in the Rural Grant Opportunity Program must meet the requirements of Subchapter D. §327

e. Pre-applications in the third group may be processed in the application stage by DOTD in time for the next year's funding. Applications on which DOTD initiates work will receive increased priority for assistance in application preparation in the following funding years. The sponsoring authorities need not wait for DOTD assistance. However, they may prepare and submit their own applications.

f. At the end of the pre-application review period, applicants will be notified of the status of their pre-applications. The sponsoring authorities seeking DOTD assistance in preparing an application will be informed by letter whether they:

i. will receive DOTD assistance in time for the current funding cycle; or

ii. will not receive assistance at this time and must compete for assistance again the following year.

g. Authorities completing their own applications may automatically move into the application stage unless the proposed solution is not eligible as a project under the program. If the proposed solution is not consistent with the

program's objectives, the Evaluation Committee may suggest alternative solutions which must be addressed in order for the application to be eligible.

3. Application Preparation (June 1-October 1)

a. Applications may be submitted anytime between June 1 and October 1, but must be received by DOTD no later than 4 p.m. October 1, in order to be considered for funding during the upcoming legislative session. Applications received after this deadline will not be eligible for the current year's program. Applications for which pre-applications were received and approved from the previous year(s) may also be accepted during this period, provided all other procedures and deadlines have been met and four years have not elapsed since the pre-application submittal.

b. On request, DOTD will prepare applications for eligible sponsoring authorities to the extent possible. All applications must adhere to the methodologies described in the instructions contained in the Statewide Flood Control Procedures Manual.

4. Evaluation Committee Review of Applications (October 1-April 1)

a. During this six-month period, the Evaluation Committee will review and evaluate all completed applications in order to make recommendations to the Joint Legislative Committee on Transportation, Highways, and Public Works (Joint Legislative Committee) for funding. Applications will be divided into urban and rural categories. Applications for projects in the eleven urban areas comprise the urban category, as shown in the Figure 1, and compete against all other urban projects for funding. All other applications will be grouped by funding district as shown in Figure 2. Proposed projects will be evaluated and ranked based on criteria established by the Evaluation Committee.

b. Projects recommended to the Joint Legislative Committee will include a mix of those occurring in each rural funding district as well as those for urban areas of the state. The method for allocating funding percentages within each district and the method for allocating total program funds to the various districts are presented in Subchapter D, Evaluation of Proposed Projects and Distribution of Funds.

Figure 1. Statewide Flood Control Program Urban Areas Funding Group

5. Public Hearings (February-March). As part of the application evaluation process, the Joint Legislative Committee will hold public hearings in locations convenient to each funding district. The purpose of the hearings will be to receive comments from the public on the preliminary recommendations of the Evaluation Committee. After the hearings, the Evaluation Committee will incorporate public comments into its evaluation, complete the project evaluations, complete the project evaluations, and submit a priority ordered list of projects to the Joint Legislative Committee.

6. Legislative Process (March-Regular Session). From the list of projects recommended by the Evaluation Committee, the Joint Legislative Committee will recommend to the legislature a construction program to be funded during the regular session. Projects recommended by the Evaluation Committee but not funded will remain active and will automatically be included in the recommended projects for the next year and receive additional points in the evaluation scoring procedure. Applications for projects that are not recommended will be returned to the sponsoring authorities with reasons for rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:561 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2849 (December 2009), amended LR 46:1235 (September 2020).

Subchapter B. Pre-Application Evaluation

§303. Pre-Application Review and Evaluation Procedure

A. The Evaluation Committee will be responsible for the review and evaluation of pre-applications. The reasons for reviewing and evaluating the pre-applications are to determine the following:

1. whether there is documented evidence of flood damages under existing conditions;

2. whether the sponsoring authority is requesting DOTD assistance in preparing the full application;

3. whether the proposed solution (if one has been developed) appears to be eligible for funding under this program;

4. whether the sponsoring authority is willing to assume responsibility for its share of the cost within 4 years of acceptance into the program.

B. If the applicant fails to adequately document that flood damages have occurred, the Evaluation Committee will not evaluate the pre-application and will notify the sponsoring authority accordingly.

C. Because of time and manpower constraints, DOTD will not be able to provide immediate assistance to all sponsoring authorities requesting assistance in the application stage.

D. Projects from sponsoring authorities seeking DOTD assistance in preparing applications will be scored and ranked with points awarded in the following manner.

Figure 1. Statewide Flood Control Program Funding Districts for Rural Projects

1. Time elapsed since initial request was made—add 1.0 point for each year up to four years since the initial request was made.

2. Local support—add up to 1.0 point for letters from the entire respective legislative delegation on file.

3. Existence of applicable surveying and engineering information within the DOTD files—add 1.0 point if vertical control has been established over the project area; 1.0 more point if no additional cross sections need to be taken; and add 1.0 more point if engineering calculations and the design are complete.

4. Severity of flooding problem documented—add the appropriate number of points based on the following document information.

Value	Occurrence	Points
0.1 point for each building damaged 0.1 point for each 300 acres flooded 0.1 point for each landowner affected 2.0 points for loss of life	x Number of occurrences in past 10 years	=

NOTE: Priorities will be established for each funding district effective June 1 of each year. The Office of Public Works will identify pre-applications for which it will try to complete applications during June 1 through October 1 application preparation period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:562 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2851 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1236 (September 2020).

Subchapter C. Evaluation of Proposed Projects and Distribution of Funds

§315. Project Evaluation Procedure

A. The Evaluation Committee will compile a priority ranked list for the projects in each rural district and projects within urban areas each funding year. For evaluation purposes, the project classifications concern the characteristics of the benefitted area, not the design criteria or the contributing drainage area. The two project classifications are urban and rural. The urban category includes projects located in the Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, Baton Rouge, Houma, Hammond, New Orleans, Mandeville-Covington, and Slidell urban areas as shown in Figure 1 above. The rural category includes every other project that is not within a classified urban area. The evaluation will be based on a combination of rating procedures described hereinafter.

B. The priority ranking of each project will be based on multiplying the scores of Parts A and B of the Application Evaluation Forms. Using the combined scores, the Evaluation Committee will produce a program priority list. The priority list will be forwarded to the Joint Legislative Committee on Transportation, Highways and Public Works.

C. Procedure for Application Evaluation Form—Part A

1. The Evaluation Committee will review each application and score it according to the following categories and maximum points.

a. Documentation of Flood Problem—20 maximum points

b. Local Support—5 maximum points

c. Technical Feasibility—45 maximum points

d. Prevention of Loss of Life and Improved Public Safety—5 maximum points

e. Environmental Effects and Impact on Development—15 maximum points

f. Projects Recommended but not Funded—10 maximum points

2. The following guidelines will be used by the Evaluation Committee to rate applications to the Statewide Flood Control Program. This scoring procedure pertains to projects which meet the legislative intent of the program. Projects which are technically unsound, cause unreasonable flooding in other areas, cause unacceptable or unmitigable environmental damages or otherwise do not meet the objectives of the program will not be scored.

a. Documentation of Flood Problem (20-point maximum). This category takes into consideration the adequacy of documentation which demonstrates the existence and severity of flood damages.

b. Local Support (5-point maximum). This category takes into consideration the following:

i. letters of support on file from the respective legislative delegation;

ii. no letters of objection from public officials, neighboring authorities, citizens' groups, etc.;

iii. multiple sponsorship.

c. Technical Feasibility (45-point maximum). This category takes into consideration the following:

i. completeness of project design;

ii. due consideration of alternatives (structural and nonstructural);

iii. compatibility of the project to other federal, state, and local projects;

iv. impact on flooding in areas upstream, downstream, and adjacent to the benefitted area.

d. Prevention of Loss of Life (5-point maximum). This category takes into consideration the following:

i. historical losses of life that may have been prevented by the project;

ii. the degree of success of the project at maintaining access to vital services (e.g., hospitals) and protection of evacuation routes.

e. Environmental Effects and Impact on Development (15-point maximum). This category takes into consideration the following:

i. no letters of objection from public agencies;

ii. no impact on special historical, archeological, geological features, or environmentally sensitive areas;

iii. not in a wetlands area;

iv. effectiveness of the project in relation to encroachment into flood prone area (i.e., 100-year flood plain).

f. Projects Recommended but Not Funded (10-point maximum). Add points for each year (up to a four-year maximum) that the proposed project has been on the list of recommended projects but has not received funding.

D. Procedure for Application Evaluation Form—Part B

1. Ratings are computed on the basis of potential damage reductions associated with the design flood and do not include efforts to annualize benefits and costs. The same formula is to be used for rural and urban projects, and appears below.

$$\text{Part B Score} = \frac{\text{Total Damages}}{\text{Total Construction Cost}} \times \frac{90}{90 - (\text{PLM} - 10)}$$

where PLM = percent local match

*Total damages are any damages from the design storm which will be prevented by the flood control project including: agricultural crop and land damages; agricultural building damages; damages to residential, commercial, public, and other buildings; damages to roads; damages to buildings; and damages to industries.

2. For applications to the Rural Grant Opportunity Program, the following formula is used.

$$\text{Part B Score} = \frac{\text{Total Damages}}{\text{Total Construction Cost}}$$

3. In the Part B scoring process, projects are separated into their appropriate categories (i.e., rural or urban).

E. Example of Evaluations. The Evaluation Committee will calculate the scores from Parts A and B to derive the total score for each project. The priority ranking will be determined by multiplying the scores from Parts A and B for each project. In the following example hypothetical information is used to compare three projects.

1. Part A. The three projects are first scored using the Application Evaluation Form—Part A. Results for the three projects are summarized in the following table. Projects are given both a raw score and a final score. The project with the highest raw score is awarded 100 points and competing projects are awarded points based on the ratio of their raw scores to the raw score of the highest scored project multiplied by 100.

2. Part B

a. The following tables demonstrate the Part B evaluation procedure for the same three projects (assumed to be in the same rural district). The benefits data presented in the first table would be taken from the applications.

b. The damage reductions and cost data for each category shown in the following table are used to compute the raw scores shown in the table for Part B scoring. The Part B scores will then be used to obtain a final score.

Tabulation of Project Points Credited for Part A				
		Project Points Credited		
Category	Maximum Points	Flat River	Danville	Sunnyvale
Documentation of Flood Problem	20	12	17	13
Local Support	5	4	5	4
Technical Feasibility	45	36	40	27
Prevention of Loss of Life and Improved Public Safety	5	3	3	2
Environmental Effects and Impact on Development	15	1	3	2
Projects Recommended but not Funded	10	2.5	0	0
RAW SCORE	100	58.5	68	48
FINAL SCORE*		86	100	71
*The project with the highest raw score receives 100 points. The other projects receive a percentage of 100 based on their raw score relative to the project with the highest raw score.				

Tabulation of Costs and Benefits			
Category	Project Damage Reduction (Dollars)		
	Flat River	Danville	Sunnydale
Agricultural Acres	118,746	600,000	40,000
Residences	4,797,000	1,000,000	350,000
C and I Buildings	_	50,000	1,100,000
Other Buildings	_	100,000	700,000
Farm Structures	_	200,000	100,000
TOTAL DAMAGE REDUCTION	4,915,746	1,950,000	2,290,000
CONSTRUCTION COST	1,300,000	550,000	700,000

Part B Scoring			
Scoring Category	Flat River	Danville	Sunnydale
Raw Score			
Total Damages__ = Construction Cost	$4,915,746 $1,300,000	$1,950,000 $ 550,000	$2,290,000 $ 700,000
or	3.78	3.55	3.27
Additional Funding Adjustment =			
90 90 - (PLM -10)	90 90 - (40 - 10)	90 90 - (10 - 10)	90 90 - (10 - 10)
or	1.50	1.00	1.00
Adjusted Score = Raw Score x Additional Funding Adjustment	5.67	3.55	3.27
*In this case Flat River contributed 40% (greater than the minimum) local match and therefore receives a higher score.			

3. Priority Score

a. The point totals from Parts A and B are multiplied in the following table to establish scores for the priority ranking of projects to be recommended for funding.

Final Priority Scores			
	Project		
Form	Flat River	Danville	Sunnydale
Part A	86	100	71
Part B	5.67	3.55	3.27
Total	488	355	232
Rank	1	2	3

b. If these three applications were in the same district, the Evaluation Committee would recommend them for funding in the following order:

i. Flat River;

ii. Danville; and

iii. Sunnydale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:574 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2852 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1237 (September 2020).

§317. Project Application Review and Public Hearings

A. The Flood Control Project Evaluation Committee will review applications between October 1 and the following April 1. During the review period, the Joint Legislative Committee on Transportation, Highways, and Public Works will conduct public hearings to solicit comments on projects being considered for funding and will determine the venue for the hearings.

B. During this time, the Evaluation Committee will also receive from the Joint Legislative Committee on Transportation, Highways, and Public Works a projected funding level for the construction program of the coming year.

C. Based on the information gathered at the public hearings and the application evaluations, the Evaluation Committee will submit a list of recommended projects to the Joint Legislative Committee, on the basis of the distribution of funds described below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:577 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2854 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1239 (September 2020).

§319. Distribution of Funds

A. Maximum Statewide Flood Control Program participation is $5,000,000 per project, unless the secretary of DOTD authorizes a project to be undertaken in excess of $5,000,000 due to the receipt of one-time funds.

B. The distribution of program funds is based on a two-tiered system consisting of:

1.a. the eleven major urban areas in Louisiana as shown in Figure 1 (§301); and,

b. the five funding districts shown in Figure 2 (§303);

2. 45 percent of total program funds is allocated to project areas within the eleven designated urban areas as shown in Figure 1 (§301). Projects within urban areas must compete for funding with projects from all urban areas. Urban funding shall be distributed evenly among urban jurisdictions with outstanding funding obligations;

3. 55 percent of total program funds is allocated to rural projects in the five funding districts as shown in Figure 2 (§303). The formula for distributing funds among the five districts is as follows:

District's Percent of Available Funding =
[0.50 x (District's Percent of State's Rural Land Area)] +
[0.50 x (District's Percent of State's Rural Population)]

4. The following table presents the funding allocation percentage for each of the five districts.

Table 1
Funding Allocations for Rural Projects by Funding District

Funding District	Percent of State Total		
	Rural Land Area	Rural Population	Funding Allocation
Northwest	28.589	25.745	27.167
Northeast	19.644	13.948	16.796
Southwest	18.199	18.537	18.368
South Central	16.907	22.824	19.866
Southeast	16.661	18.964	17.803
State Total	100.0	100.0	100.0

5. The total annual funding provided to projects under the Rural Grant Opportunity Program shall not exceed 25 percent of the total annual funding provided to the Statewide Flood Control Program.

C. The Evaluation Committee will make its recommendations for projects within the limitations of the funding projections for the coming year and in accordance with the distributions presented in Table 1 of this Chapter. Table 2 of this Chapter presents the funding distribution for a hypothetical $50 million construction program allocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:577 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2854 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1239 (September 2020).

§321. Redistribution Procedure

A. In the event that there are an insufficient number of approved projects in a particular rural district, the available funds will be redistributed to the other rural districts.

B. All excess funds shall be redistributed to other districts on a pro rata basis based on each funding district's percentage of rural project funds (Table 4 of this chapter).

C. If funds allocated to the five funding districts are remaining after all approved rural projects have been funded, any remaining funds may then be used to fund approved but unfunded projects in urban areas.

D. If funds allocated to urban areas are remaining after all approved urban projects have been funded, any remaining funds may then be used to finance rural projects and shall be allocated in the same fashion as any funds initially allocated to these districts.

E. In the event that funds become available due to the expiration of the four-year period allowed sponsoring authorities to generate local matching funds, those funds previously set aside will be redistributed in the same manner as described above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR

5:578 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2855 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1239 (September 2020).

§323. Legislative Process

A. The Joint Legislative Committee on Transportation, Highways and Public Works will submit to the legislature a construction program. As specified by Act 351 of 1982, the legislature may delete any project that it believes was not selected in accordance with the guidelines of the Act. The legislature may not make any additions or substitutions to the construction program.

B. Projects recommended by the Evaluation Committee but not funded by the legislature will remain on the Evaluation Committee's recommendation list for a period of up to four years. These projects must compete with all other remaining projects from previous funding years (up to four years) and new projects in subsequent funding years. However, projects recommended but not funded will be awarded 2.5 points (10 points maximum) for each year since the first filing of the project application.

Table 2
Example Distribution of Funds for Hypothetical $10 Million Construction Program

District	Total	District Total
Urban Areas	$4,500,000	--
Rural Districts	$5,500,000	--
Northwest		$1,494,185
Northeast		$923,780
Southwest		$1,010,240
South Central		$1,092,630
Southeast		$979,165
Total	$10,000,000	$5,500,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:578 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2855 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1240 (September 2020).

§325. Construction and Operation

A. Each sponsoring authority designated as a recipient of program funds must enter into an agreement with DOTD prior to the initiation of construction of a project and awarding of funds. This agreement stipulates what must be followed during all construction phases of the project, operation and maintenance, as well as the sponsoring authorities' obligations under R.S. 38:91. Policies and procedures that must be adhered to are detailed in the *Statewide Flood Control Program Procedural Manual for Funded Projects* made available to all sponsoring authorities designated to receive program funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 5:579 (May 1985), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended LR 35:2855 (December 2009), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1240 (September 2020).

Subchapter D. Rural Grant Opportunity Program

§327. Eligibility

A. This Section describes the requirements of eligibility for participation in the Rural Grant Opportunity Program.

1. In order to be considered for the Rural Grant Opportunity Program, the authority shall also submit a resolution declaring its financial inability to satisfy the local match requirement of R.S. 38:90.9(A)(4). The resolution shall include a sworn affidavit executed by the authority's private certified public accountant certifying that, after an examination of the authority's financial records, monies are not available out of the accumulated unreserved earnings generated by the authority to meet the local match requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Engineering, LR 46:1240 (September 2020).

Chapter 5. Funding Applications

§501. Guidelines and Procedures for Applications for State Funding Assistance

A. Statewide Flood Control Program

1. The requests for Statewide Flood Control Program funds far exceed the amount of money made available each year. In an effort to best utilize the available funds, the following time schedules shall be incorporated into project development.

Task	Maximum Time, Years
1. Execution of Agreement Between DOTD and Sponsor	1/2
2. Application of Permits	1
3. Submittal of Preliminary Plans	2
4. Submittal of Draft Final Plans, Specifications and Cost Estimate	3
5. Acquisition of Rights-of-Way Permits and Utility Relocation and Securing the Funding for the Sponsor's Portion of the Project	3 1/2
6. Advertising for Bids and Awarding of Contract	4

2. If an approved project is authorized to be separated into multiple phases, all subsequent phases must have been advertised for bids within three years of the final acceptance resolution of the previous phase.

3. The date of the letter from the chairman of the Flood Control Evaluation Committee advising the sponsor that his project has been funded shall be used as the beginning point in determining the amount of time that has elapsed.

4. In the event a task or phase is not completed within the maximum time allotted, the agreement between DOTD and the sponsor shall be canceled and the state funds that were allocated for the proposed project shall be reallocated.

5. If the sponsor wishes to continue with the project, the sponsor shall be required to submit an updated application. If the sponsor fails to submit an updated application within two years of the date the agreement was canceled, the sponsor will be deemed to have abandoned the project and it will be removed from the program.

6. The updated application will be treated as a new application and must follow the same programmatic procedures for applying for funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:90.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Public Works, LR 1:249 (May 1975), amended LR 12:533 (August 1986), repromulgated by the Department of Transportation and Development, Office of Public Works, LR 31:942 (April 2005), amended by the Department of Transportation and Development, Office of Engineering), amended LR 46:1240 (September 2020).

Shawn D. Wilson, PhD
Secretary

2009#017

RULE

Department of Treasury
Board of Trustees of the Teachers' Retirement System of Louisiana

Deferred Retirement Option Plan (DROP),
Computation of Final Average Compensation
(LAC 58:III.Chapters 5 and 9)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 11:826 that the Board of Trustees of the Teachers' Retirement System of Louisiana (TRSL) has amended LAC 58:III Chapter 5 relative to the Deferred Retirement Option Plan (DROP) in order to clarify the rules contained therein, ensure better sequential and chronological placement within the regulatory framework, remove obsolete or outdated language, and ensure harmonization with current TRSL practices and federal tax rules. The Board of Trustees of the Teachers' Retirement System of Louisiana (TRSL) has also repealed Chapter 9 Computation of Final Average Compensation, and the single section contained therein, LAC 58:III.901, Time Frames for Computation, as that provision relating to time frames for computing Final Average Compensation is obsolete. This Rule is hereby adopted on the day of promulgation.

Title 58
RETIREMENT
Part III. Teachers' Retirement System of Louisiana
Chapter 5. Deferred Retirement Option Plan (DROP)

§501. Definitions and General Provisions

A. As used herein, the following words and phrases have the meanings ascribed to them in this Section unless a different meaning is plainly required by the context:

DROP Participant—a member for whom deferred retirement option plan participation has commenced due to TRSL having received a physically or electronically signed DROP application and who lives for at least 30 days after the effective date of DROP participation.

Involuntary Termination—the participant is terminated by the employer prior to completing the selected participation period and is not rehired by another TRSL employer on the following day.

Voluntary Termination—the participant, for any reason, elects to withdraw from DROP prior to completing the selected participation period and also terminates employment and is not rehired by another TRSL employer the following day.

Year—one full calendar year, 365 days, or 366 days in a leap year.

B. These general provisions apply to applications submitted to participate in DROP unless otherwise indicated.

1. Applications for DROP may be mailed, faxed or sent electronically, but must be complete and signed.

2. A member shall not begin his DROP participation until TRSL has received a signed application for DROP on an authorized TRSL form. The member should complete, sign and submit all portions of the authorized TRSL DROP application form.

3. In the event an employer fails to submit the application in a timely fashion, the provisions of R.S. 11:761 shall apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 46:1241 (September 2020).

§502. Service Requirements for School Food Service Plan A

A. Members of School Food Service Plan A of the Teachers' Retirement System of Louisiana (TRSL), in lieu of terminating employment and accepting a retirement allowance, may elect to participate in the deferred retirement option plan (DROP) in accordance with R.S. 11:786-791 when the following eligibility requirements for plan participation are met.

1. 30 years of service credit at any age;
2. 25 years of service credit and at least age 55; and
3. 10 years of service credit and at least age 60 (excluding military service).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 46:1241 (September 2020).

§503. Management of DROP Accounts

A. Deposits to DROP accounts will be effective on the first day of each month of participation in the plan. Any DROP account deposit attributable to the first month of DROP participation shall be prorated to coincide with the first day of DROP participation. Any DROP account deposit attributable to the last month of DROP participation shall be prorated to coincide with the last day of DROP participation.

B. DROP account statements will be issued on a quarterly basis as follows:

1. - 2. …

3. statements issued after completion of DROP participation and prior to termination of employment will reflect total account deposits and interest earned for the quarterly period.

C. Interest earnings will begin accruing the day after termination of DROP participation and will be calculated on the daily principal balance and posted annually or monthly as listed below:

1. members eligible to enter DROP prior to January 1, 2004, will have interest deposited to their DROP accounts once a year when the actuarially realized rate of return is approved by the Public Retirement Systems' Actuarial Committee. This interest will be equal to the approved actuarially realized rate of return less an administrative fee. Interest deposits will reflect the interest earned on the account during the previous fiscal year and will be entered on quarterly statements issued after this approval is obtained. No interest will accrue on the DROP account after the date the account has been liquidated. No interest is paid on any interest only balance. *Liquidated* means all funds have been withdrawn from the DROP account except for the possible final interest earnings due but not yet posted;

2. members eligible to enter DROP on or after January 1, 2004, will have their DROP funds transferred to a liquid asset money market account after the termination of DROP participation. Interest will be deposited monthly based on the interest earned on the liquid asset money market account less an administrative fee. Final payouts of DROP accounts will have interest posted through the date of the payment. Quarterly statements issued will reflect the interest earned and posted;

D. Withdrawal payments from DROP accounts will be issued on the fifteenth day of each month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), repromulgated LR 24:500 (March 1998), amended LR 25:1655 (September 1999), LR 30:100 (January 2004), LR 46:1241 (September 2020).

§505. Duration of DROP Participation

A. Participation in DROP may not exceed a period of three consecutive years.

1. In order to participate for the maximum three consecutive years, the member must begin DROP participation within 60 calendar days after the first possible eligibility requirement for participation is met.

2. The participation period must end not more than three years and 60 calendar days from the date the member first became eligible to participate.

3. The participation period may only be shortened by the participant's termination of employment or death.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 19:1601 (December 1993), LR 21:1267 (November 1995), repromulgated LR 24:500 (March 1998), amended LR 46:1242 (September 2020).

§507. Retirement Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:739 and R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 18:1419 (December 1992), LR 19:1602 (December 1993), repromulgated LR 24:501 (March 1998), repealed LR 46:1242 (September 2020).

§509. Withdrawal of Funds from a DROP Account

A. Withdrawals from a DROP account may begin after the first regular retirement benefit has been issued. Withdrawals from a DROP account are not permitted prior to the termination of DROP participation or during employment which continues immediately following the DROP participation period and shall be limited to the following methods:

1. - 5. …

6.a. one-time partial account balance withdrawal at the beginning of, or during the term of, monthly or annual withdrawals selected in accordance with §509.A.2, 3, 4, or 5. If the one-time partial account balance withdrawal is made before any other withdrawals, the balance of the account will be paid as determined by the withdrawal method selected in accordance with §509.A.2, 3, 4, or 5. If withdrawals have already begun, the duration of the remaining monthly and or annual withdrawals will be redetermined and the appropriate federal tax laws will be applied. If the one-time partial account balance withdrawal is to be made after the monthly or annual withdrawals have begun, the retiree must meet one of the following conditions:

i. participant must have been at least age 55 in the year of participant's retirement; or

ii. participant must be at least 59 1/2 at the time participant chooses the one-time single lump sum withdrawal;

b. …

c. if a member is 72 or older when he chooses a partial single sum after withdrawals have begun, even though he retired at a younger age, he will have the required minimum distribution calculated using the "Single Life Table" (SLT), or he may choose the "Uniform Lifetime Table" (ULT), or the "Joint and Last Survivor Table" (JLST), whichever applies. The result of using one of these tables may allow a member to lower his monthly or annual withdrawal;

7. …

B. Selection of the withdrawal method and the amount of the periodic payment must be complete, correct, and on the form prescribed by TRSL. The correctly completed prescribed TRSL form should be received by TRSL 30 days prior to the disbursement, but no later than 8 business days prior to disbursement. Members under age 72 in the year of retirement must begin withdrawals within 12 months of the date of retirement. Members age 72 or older in the year of retirement must begin withdrawals by April 1 of the calendar year following the date of retirement or 12 months after retirement, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), repromulgated LR 24:501 (March 1998), amended LR 28:1031 (May 2002), LR 28:2569 (December 2002), LR 46:1242 (September 2020).

§510. Distributions Provided for by Gulf Opportunity Zone Act of 2005

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791 and the U. S. Gulf Opportunity Zone Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System, LR 32:867 (May 2006), repealed LR 46:1242 (September 2020).

§511. Change of DROP Withdrawal Method

A. The participant will have one opportunity per 12-month period to change the chosen withdrawal method

and/or amount if the original method selected was either §509.A.2, 3, 4, or 5. Any change must be made in accordance with the life expectancy of the participant.

1. For participants under age 72, any change in the withdrawal method must be made in accordance with the life expectancy of the participant at the time of his retirement, and at no time may the disbursement from the account be less than the amount of the originally selected periodic payment.

2. For participants over age 72 at the time of the change, the change in the withdrawal method may allow the participant to reduce the disbursement only if the participant was not age 72 at the time he began withdrawals. Otherwise the rule under §511.A.1 will apply.

B. Except as provided below, when the life expectancy of the participant governs the selected periodic withdrawal method, disbursements from the DROP account shall be made in accordance with the "Single Life Table" (SLT) for participants first eligible to begin withdrawing.

1. If a retiree is 72 or older, he must meet a required minimum distribution (RMD) and may request the use of the "Single Life Table" (SLT), "Uniform Lifetime Table" (ULT) or the "Joint and Last Survivor Table" (JLST), whichever applies. Once the election has been made he cannot elect to make a change at a later date.

C. The selection of a withdrawal method and the amount of the periodic payment should be designated by the participant 30 days prior to disbursement, but no later than 8 business days prior to disbursement, on the form prescribed by the TRSL.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), repromulgated LR 24:502 (March 1998), amended LR 24:961 (May 1998), LR 28:1031 (May 2002), LR 28:2569 (December 2002), amended LR 46:1242 (September 2020).

§513. Termination of DROP Participation

A. When termination of the DROP participation period occurs because of the death of the participant, or if the death of the participant occurs in the absence of an executed affidavit of plan election, the provisions of R.S. 11:783 and R.S. 11:762 shall apply.

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:622 (June 1992), amended LR 18:1419 (December 1992), LR 19:1602 (December 1993), repromulgated LR 24:502 (March 1998), amended LR 28:1032 (May 2002), amended LR 46:1243 (September 2020).

§517. Affidavit of Plan Election

A. If a member fails to return a completely executed and notarized affidavit of plan election to choose a retirement benefit option by 120 calendar days after the member's receipt of the unsigned affidavit or by 120 calendar days after the beginning of the member's DROP participation, whichever is later, then the member will have be deemed to not have elected to participate in DROP. Employee and employer contributions and appropriate interest or actuarial cost must then be remitted to TRSL for the prior period of TRSL employment in order to receive service credit for that period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:826.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:622 (June 1992), amended LR 20:1020 (September 1994), repromulgated LR 24:502 (March 1998), amended LR 46:1226 (September 2020).

§519. Application for DROP

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 18:621 (June 1992), amended LR 20:1020 (September 1994), repromulgated LR 24:502 (March 1998), amended LR 24:962 (May 1998), LR 28:1032 (May 2002), repealed LR 46:1243 (September 202).

§521. Teaching Experience

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:739 and R.S. 11:786-791.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 21:1267 (November 1995), amended LR 23:85 (January 1997), repromulgated LR 24:502 (March 1998), repealed LR 46:1243 (September 2020).

Chapter 9. Computation of Final Average Compensation

§901. Time Frames for Computation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:701(5).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 21:1266 (November 1995), repromulgated LR 24:503 (March 1998), repealed LR 46:1243 (September 2020).

Dana L. Vicknair
Director

2009#016

RULE

Workforce Commission
Office of Workers' Compensation Administration

Medical Treatment Guidelines
(LAC 40:I.Chapter 20)

The Louisiana Workforce Commission has amended certain portions of the Medical Guidelines contained in the Louisiana Administrative Code, Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 2, Medical Guidelines, Chapter 20, regarding low back pain guidelines. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C). This Rule is hereby adopted on the day of promulgation.

Title 40
LABOR AND EMPLOYMENT
Part I. Workers' Compensation Administration
Subpart 2. Medical Guidelines
Chapter 20. Spine Medical Treatment Guidelines
Subchapter B. Low Back Pain

Editor's Note: Form LWC-WC 1009. Disputed Claim for Medical Treatment has been moved to §2328 of this Part.

§2013. Introduction

A. This document has been prepared by the Louisiana Workforce Commission, Office of Workers' Compensation (OWCA) and should be interpreted within the context of guidelines for physicians/providers treating individuals qualifying under Louisiana Workers' Compensation Act as injured workers with low back pain. Although the primary purpose of this document is advisory and educational, the guidelines are enforceable under the Louisiana Workers Compensation Act. All medical care, services, and treatment owed by the employer to the employee in accordance with the Louisiana Workers' Compensation Act shall mean care, services, and treatment in accordance with these guidelines. Medical care, services, and treatment that varies from these guidelines shall also be due by the employer when it is demonstrated to the medical director of the office by a preponderance of the scientific medical evidence, that a variance from these guidelines is reasonably required to cure or relieve the injured worker from the effects of the injury or occupational disease given the circumstances. Therefore, these guidelines are not relevant as evidence of a provider's legal standard of professional care. To properly utilize this document, the reader should not skip nor overlook any sections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1655 (June 2011), amended LR 46:1244 (September 2020).

§2015. General Guideline Principles

A. The principles summarized in this section are key to the intended implementation of all Office of Workers' Compensation medical treatment guidelines and critical to the reader's application of the guidelines in this document.

1. Application of Guidelines. The OWCA provides procedures to implement medical treatment guidelines and to foster communication to resolve disputes among the provider, payer, and patient through the Workers Compensation Act.

2. Education. Education of the patient and family, as well as the employer, insurer, policy makers and the community should be the primary emphasis in the treatment of workers' compensation injuries. Currently, practitioners often think of education last, after medications, manual therapy, and surgery. Practitioners must develop and implement strategies to educate patients, employers, insurance systems, policy makers, and the community as a whole. An education-based paradigm should always start with inexpensive communication providing reassuring and evidence-based information to the patient. More in-depth education is currently a component of treatment regimens which employ functional, restorative, preventive and rehabilitative programs. No treatment plan is complete without addressing issues of individual and/or group patient education as a means of facilitating self-management of symptoms and prevention. Facilitation through language interpretation, when necessary, is a priority and part of the medical care treatment protocol.

3. Informed Decision Making. Providers should implement informed decision making as a crucial element of a successful treatment plan. Patients, with the assistance of their health care practitioner, should identify their personal and professional functional goals of treatment at the first visit. Progress towards the individual's identified functional goals should be addressed by all members of the health care team at subsequent visits and throughout the established treatment plan. Nurse case managers, physical therapists, and other members of the health care team play an integral role in informed decision-making and achievement of functional goals. Patient education and informed decision-making should facilitate self-management of symptoms and prevention of further injury.

4. Treatment Parameter Duration—time frames for specific interventions commence once treatments have been initiated, not on the date of injury. Obviously, duration will be impacted by patient adherence, as well as availability of services. Clinical judgment may substantiate the need to accelerate or decelerate the time frames discussed in this document. Such deviation shall be in accordance with La. R.S. 23:1203.1.

5. Active interventions emphasizing patient responsibility, such as therapeutic exercise and/or functional treatment, are generally emphasized over passive modalities, especially as treatment progresses. Generally, passive interventions are viewed as a means to facilitate progress in an active rehabilitation program with concomitant attainment of objective functional gains.

6. Active Therapeutic Exercise Program. Exercise program goals should incorporate patient strength, endurance, flexibility, coordination, and education. This includes functional application in vocational or community settings.

7. Positive Patient Response. Positive results are defined primarily as functional gains that can be objectively measured.

a. Objective functional gains include, but are not limited to, positional tolerances, range-of-motion (ROM), strength, and endurance, activities of daily living, ability to function at work, cognition, psychological behavior, and efficiency/velocity measures that can be quantified. Subjective reports of pain and function should be considered and given relative weight when the pain has anatomic and physiologic correlation. Anatomic correlation must be based on objective findings.

8. Re-Evaluation of Treatment within Four Weeks. If a given treatment or modality is not producing positive results within four weeks, treatment should be either modified or discontinued. Reconsideration of diagnosis should also occur in the event of poor response to a seemingly rational intervention.

9. Surgical Interventions. Surgery should be contemplated within the context of expected improvement of functional outcome and not purely for the purpose of pain relief. The concept of "cure" with respect to surgical treatment by itself is generally a misnomer. All operative interventions must be based upon positive correlation of

clinical findings, clinical course, and diagnostic tests. A comprehensive assimilation of these factors must lead to a specific diagnosis with positive identification of pathologic conditions. The decision and recommendation for operative treatment, and the appropriate informed consent should be made by the operating surgeon. Prior to surgical intervention, the patient and treating physician should identify functional operative goals and the likelihood of achieving improved ability to perform activities of daily living or work activities and the patient should agree to comply with the pre- and post-operative treatment plan and home exercise requirements. The patient should understand the length of partial and full disability expected post-operatively.

10. Pharmacy Louisiana Law and Regulation. All prescribing will be done in accordance with the laws of the state of Louisiana as they pertain respectively to each individual licensee, including, but not limited to: Louisiana State Board of Medical Examiners regulations governing medications used in the treatment of non-cancer-related chronic or intractable pain; Louisiana Board of Pharmacy Prescription Monitoring Program; Louisiana Department of Health and Hospitals licensing and certification standards for pain management clinics; other laws and regulations affecting the prescribing and dispensing of medications in the state of Louisiana.

11. Six Month Time Frame. Injuries resulting in temporary total disability may require maintenance treatment and may not attain return to work in six months.

12. Return to Work. Return to work is therapeutic, assuming the work is not likely to aggravate the basic problem or increase long-term pain. An injured worker's return-to-work status shall not be the sole cause to deny reasonable and medically necessary treatment under these guidelines. Two good practices are: early contact with injured workers and provide modified work positions for short-term injuries. The practitioner must provide specific physical limitations and the patient should never be released to non-specific and vague descriptions such as "sedentary" or "light duty." The following physical limitations should be considered and modified as recommended: lifting, pushing, pulling, crouching, walking, using stairs, bending at the waist, awkward and/or sustained postures, tolerance for sitting or standing, hot and cold environments, data entry and other repetitive motion tasks, sustained grip, tool usage and vibration factors. Even if there is residual chronic pain, return-to-work is not necessarily contraindicated. The practitioner should understand all of the physical demands of the patient's job position before returning the patient to full duty and should request clarification of the patient's job duties. Clarification should be obtained from the employer or, if necessary, from including, but not limited to, occupational health nurse, physical therapist, occupational therapist, vocational rehabilitation specialist, an industrial hygienist, chiropractor or another professional. American Medical Association clarifies "disability" as "activity limitations and/or participation restrictions in an individual with a health condition, disorder or disease" versus "impairment" as "a significant deviation, loss, or loss of use of any body structure or body function in an individual with a health condition, disorder or disease".

13. Delayed Recovery. Within the discretion of the treating physician, strongly consider a psychological evaluation, if not previously provided, as well as initiating interdisciplinary rehabilitation treatment and vocational goal setting, for those patients who are failing to make expected progress 6 to 12 weeks after initiation of treatment of an injury. The OWCA recognizes that 3 to 10 percent of all industrially injured patients will not recover within the timelines outlined in this document despite optimal care. Such individuals may require treatments beyond the limits discussed within this document, but such treatment requires clear documentation by the authorized treating practitioner focusing on objective functional gains afforded by further treatment and impact upon prognosis.

14. Guideline Recommendations and Inclusion of Medical Evidence. All recommendations are based on available evidence and/or consensus judgment. It is generally recognized that early reports of a positive treatment effect are frequently weakened or overturned by subsequent research. Per R.S. 1203.1, when interpreting medical evidence statements in the guideline, the following apply to the strength of recommendation.

Strong	Level 1 Evidence	We Recommend
Moderate	Level 2 and Level 3 Evidence	We Suggest
Weak	Level 4 Evidence	Treatment is an Option
Inconclusive	Evidence is Either Insufficient of Conflicting	

a. …

15. Treatment of Pre-Existing Conditions The conditions that preexisted the work injury/disease will need to be managed under two circumstances: (a) A pre-existing condition exacerbated by a work injury/disease should be treated until the patient has returned to their objectively verified prior level of functioning or Maximum Medical Improvement (MMI); and (b) A pre-existing condition not directly caused by a work injury/disease but which may prevent recovery from that injury should be treated until its objectively verified negative impact has been controlled. The focus of treatment should remain on the work injury/disease.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1655 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1135 (June 2014), LR 46:1244 (September 2020).

§2017. Initial Diagnostic Procedures

A. …

1. History-taking and physical examination (Hx and PE) are generally accepted, well-established and widely used procedures that establish the foundation/basis for and dictates subsequent stages of diagnostic and therapeutic procedures. List of medications patient is taking should be included in every history, including over the counter medicines as well as supplements. When findings of clinical evaluations and those of other diagnostic procedures are not complementing each other, the objective clinical findings

should have preference. The medical records should reasonably document the following.

a. History of Present Injury—a detailed history, taken in temporal proximity to the time of injury should primarily guide evaluation and treatment. The history should include pertinent positive and negative information regarding the following:

i. …

ii. location of pain, nature of symptoms, and alleviating/exacerbating factors (e.g., sitting tolerance). The history should include both the primary and secondary complaints (e.g., primary low back pain, secondary hip, groin). The use of a patient completed pain drawing, such as Visual Analog Scale (VAS), is highly recommended, especially during the first two weeks following injury to assure that all work related symptoms are addressed;

a.iii. - b.vi. …

c. Physical Examination—should include accepted tests and exam techniques applicable to the area being examined, including:

i. general and visual inspection, including posture, stance, balance and gait;

1.c.ii. - 3.e. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1656 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1136 (June 2014), LR 46:1245 (September 2020).

§2019. Follow-Up Diagnostic Imaging and Testing Procedures

A. - B. …

C. Magnetic resonance imaging (MRI), myelography, or computed axial tomography (CT) scanning following myelography, and other imaging procedures and testing may provide useful information for many spinal disorders. When a diagnostic procedure, in conjunction with clinical information, can provide sufficient information to establish an accurate diagnosis, the second diagnostic procedure will become a redundant procedure. At the same time, a subsequent diagnostic procedure can be a complementary diagnostic procedure if the first or preceding procedures, in conjunction with clinical information, cannot provide an accurate diagnosis. Usually, preference of a procedure over others depends upon availability, a patient's tolerance, and/or the treating practitioner's familiarity with the procedure. Subsequent MRI may be indicated with a change in neurological exam, change in symptoms or a contemplated surgical intervention.

1. Imaging studies are generally accepted, well-established and widely used diagnostic procedures. In the absence of myelopathy, or neurological changes, or history of cancer, imaging usually is not appropriate until conservative therapy has been tried and failed. Six to eight weeks of treatment are usually an adequate period of time before an imaging procedure is in order, but the clinician should use judgment in this regard. When indicated, imaging studies can be utilized for further evaluation of the low back, based upon the mechanism of injury, symptoms, and patient history. Prudent choice of a single diagnostic procedure, a complementary combination of procedures, or a proper sequential order of complementary procedures will help ensure maximum diagnostic accuracy and minimize adverse effect to the patient. When the findings of the diagnostic imaging and testing procedures are not consistent with the clinical examination, the clinical findings should have preference. There is good evidence that in the asymptomatic population, disc bulges, annular tears, or high intensity zone areas, and disc height loss are prevalent 40 to 60 percent of the time depending on the condition, study, and age of the patient. Therefore, the existence of these anatomic findings should not be considered relevant without physiologic and clinical correlation in an individual patient. The studies below are listed in frequency of use, not importance:

a. - h. …

2. Other Tests. The following diagnostic procedures in this subsection are listed in alphabetical order, not by importance:

a. Electrodiagnostic Testing

i. - vi. …

b. Injections – Diagnostic

i. Spinal Diagnostic Injections. Diagnostic spinal injections are commonly used in patients and they usually have been performed previously in the acute or subacute stage. They may rarely be necessary for aggravations of low back pain. Refer to the OWCA Low Back Pain Medical Treatment Guideline for indications.

ii. Diagnostic peripheral nerve blocks such as medial branch facet nerves (lumbar), sacral lateral branches of sacroiliac joints, selective nerve root blocks and transforaminal epidural injections and other pure sensory nerves suspected of causing pain, also include diagnostic facet joint injection as a diagnostic block. Images are required to be saved to verify needle placement.

iii. Medial branch facet blocks (lumbar, indicated if there is demonstration of tenderness over the facet joints or pain on the facet loading maneuvers,) and sacral lateral branch blocks, if provide 80 percent or more pain reduction as measured by a numerical pain index scale within one hour of the medial branch blocks up to three levels per side, then rhizotomy of the medial branch nerves, up to four nerves per side, may be done without confirmation block. If the initial set of medial branch blocks provides less than 80 percent but at least 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, the medial branch block should be repeated for confirmation before a rhizotomy is performed. If 50 percent or greater pain reduction is achieved as measured by the NPIS with two sets of medial branch blocks for facet joint pain, then rhizotomy may be performed. Images are required to be saved to verify needle placement.

iv. In general, relief should last for at least the duration of the local anesthetic used and should significantly result in functional improvement and relief of pain. Refer to Injections-Spinal Therapeutic for information on other specific therapeutic injections.

(a). Description. Diagnostic spinal injections are generally accepted, well-established procedures. These injections may be useful for localizing the source of pain, and may have added therapeutic value when combined with injection of therapeutic medication(s). Each diagnostic injection has inherent risks, and risk versus benefit should always be evaluated when considering injection therapy.

(b). Indications. Since these procedures are invasive, less invasive or non-invasive procedures should be considered first. Selection of patients, choice of procedure, and localization of the level for injection should be determined by clinical information indicating strong suspicion for pathologic condition(s) and the source of pain symptoms. Because injections are invasive with an inherent risk, the number of diagnostic procedures should be limited in any individual patient to those most likely to be primary pain generators. Patients should not receive all of the diagnostic blocks listed merely in an attempt to identify 100 percent of the pain generators.

(c). The interpretation of the test results are primarily based on functional change, symptom report, and pain response (via a recognized pain scale), before and at an appropriate time period after the injection. The diagnostic significance of the test result should be evaluated in conjunction with clinical information and the results of other diagnostic procedures. Injections with local anesthetics of differing duration may be used to support a diagnosis. In some cases, injections at multiple levels may be required to accurately diagnose low back pain.

(i). It is obligatory that sufficient data be accumulated by the examiner performing this procedure such that the diagnostic value of the procedure be evident to other reviewers. This entails, at a minimum, documentation of patient response immediately following the procedure with details of any symptoms with a response and the degree of response. Responses must be identified as to specific body part (e.g., low back, leg pain). The practitioner must identify the local anesthetic used and the expected duration of response for diagnostic purposes.

(ii). Multiple injections provided at the same session without staging may seriously dilute the diagnostic value of these procedures. Practitioners must carefully weigh the diagnostic value of the procedure against the possible therapeutic value.

(d). Special Requirements for Diagnostic Injections. Since multi-planar fluoroscopy during procedures is required to document technique and needle placement, an experienced physician should perform the procedure. Permanent images are required to verify needle placement. The subspecialty disciplines of the physicians performing the injections may be varied, including, but not limited to: anesthesiology, radiology, surgery, neurology or physiatry. The practitioner should document hands-on training through workshops and/or completed fellowship training with interventional training. They must also be knowledgeable in radiation safety.

(e). Complications. General complications of diagnostic injections may include transient neurapraxia, nerve injury, infection, headache, urinary retention, and vasovagal effects, as well as epidural hematoma, permanent neurologic damage, dural perforation, and CSF leakage, and spinal meningeal abscess. Permanent paresis, anaphylaxis, and arachnoiditis have been rarely reported with the use of epidural steroids.

(f). Contraindications

(i). Absolute contraindications to diagnostic injections include: bacterial infection-systemic or localized to region of injection; bleeding diatheses; hematological conditions; and possible pregnancy;

(ii). Relative contraindications to diagnostic injections may include: allergy to contrast, poorly controlled diabetes mellitus and hypertension;

(iii). Drugs affecting coagulation may require restriction from use. Anti-platelet therapy and anti-coagulations should be addressed individually by a knowledgeable specialist. It is recommended to refer to the American Society of Regional Anesthesia for anticoagulation guidelines.

(g). Specific Diagnostic Injections. In general, relief should last for at least the duration of the local anesthetic used and should significantly relieve pain and result in functional improvement. Refer to "Injections – Therapeutic" for information on specific therapeutic injections.

(i). Lumbar Medial Branch Facet Blocks and Sacral Lateral Branch Blocks. If the block provides 80 percent or more pain reduction as measured by a numerical pain index scale within one hour of the medial branch blocks up to three levels per side, then rhizotomy of the medial branch nerves, up to four nerves per side, may be done without confirmation block. If the initial set of medial branch blocks provides less than 80 percent but at least 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, the medial branch block should be repeated for confirmation before a rhizotomy is performed. If 50 percent or greater pain reduction is achieved as measured by the NPIS with two sets of medial branch blocks for facet joint pain, then rhizotomy may be performed.

[a]. Frequency and Maximum Duration: May be repeated once for comparative blocks. Limited to four levels

(ii). Transforaminal injections/spinal selective nerve block (SSNB) are generally accepted and useful in identifying spinal pathology. When performed for diagnosis, small amounts of local anesthetic up to a total volume of 1.0 cc should be used to determine the level of nerve root irritation. A positive diagnostic block should result in a positive diagnostic functional benefit and a 50 percent reduction in nerve-root generated pain appropriate for the anesthetic used as measured by accepted pain scales (such as a VAS).

[a]. Time to Produce Effect: less than 30 minutes for local anesthesia; corticosteroids up to 72 hours for most patients.

[b]. Frequency and Maximum Duration: once per suspected level. Limited to two levels

(iii). Zygapophyseal (Facet) Blocks. Facet blocks are generally accepted but should not be considered diagnostic blocks for the purposes of determining the need for a rhizotomy (radiofrequency medial branch neurotomy), nor should they be done with medial branch blocks. These blocks should not be considered a definitive diagnostic tool. They may be used diagnostically to direct functional rehabilitation programs. A positive diagnostic block should result in a positive diagnostic functional benefit and a 50 percent reduction in pain appropriate for the anesthetic used as measured by accepted pain scales (such as a VAS). They then may be repeated per the therapeutic guidelines when they are accompanied by a functional rehabilitation program. (Refer to Therapeutic Spinal Injections).

[a]. Time to Produce Effect: Less than 30 minutes for local anesthesia; corticosteroids up to 72 hours for most patients;

[b]. Frequency and Maximum Duration: Once per suspected level, limited to two levels.

(iv). Sacroiliac Joint Injection. A generally accepted Injection of local anesthetic in an intra-articular fashion into the sacroiliac joint under fluoroscopic guidance. Long-term therapeutic effect has not yet been established. Indications: Primarily diagnostic to rule out sacroiliac joint dysfunction versus other pain generators. Intra-articular injection can be of value in diagnosing the pain generator. There should be documented relief from previously painful maneuvers (e.g., Patrick's test) and at least 50 percent pain relief on post-injection physical exam (as measured by accepted pain scales such as a VAS) correlated with functional improvement. Sacroiliac joint blocks should facilitate functionally directed rehabilitation programs.

[a]. Time to Produce Effect: Up to 30 minutes for local anesthetic;

[b]. Frequency and Maximum Duration: 1.

c. Personality/ Psychological/ Psychiatric/ Psychosocial Evaluation. These are generally accepted and well-established diagnostic procedures with selective use in the low back population, but have more widespread use in subacute and chronic low back populations. Diagnostic testing procedures may be useful for patients with symptoms of depression, delayed recovery, chronic pain, recurrent painful conditions, disability problems, and for preoperative evaluation. Psychological/psychiatric /psychosocial and measures have been shown to have predictive value for postoperative response, and therefore should be strongly considered for use pre-operatively when the surgeon has concerns about the relationship between symptoms and findings, or when the surgeon is aware of indications of psychological complication or risk factors for psychological complication (e.g. childhood psychological trauma). Psychological testing should provide differentiation between pre-existing conditions versus injury caused psychological conditions, including depression and posttraumatic stress disorder. Psychological testing should incorporate measures that have been shown, empirically, to identify comorbidities or risk factors that are linked to poor outcome or delayed recovery.

i. Formal psychological or psychosocial evaluation should be performed on patients not making expected progress within 6 to 12 weeks following injury and whose subjective symptoms do not correlate with objective signs and test results. In addition to the customary initial exam, the evaluation of the injured worker should specifically address the following areas:

(a).- (f). …

(g). risk factors and psychological comorbidities that may influence outcome and that may require treatment;

(h). childhood history, including history of childhood psychological trauma, abuse and family history of disability.

ii. Personality/ psychological/ psychiatric / psychosocial evaluations consist of two components, clinical interview and psychological testing. Results should help clinicians with a better understanding of the patient in a number of ways. Thus, the evaluation result will determine the need for further psychosocial interventions; and in those cases, Diagnostic and Statistical Manual of Mental Disorders (DSM) diagnosis should be determined and documented. The evaluation should also include examination of both psychological comorbidities and psychological risk factors that are empirically associated with poor outcome and/or delayed recovery. An individual with a Ph.D., Psy.D, or psychiatric M.D./D.O. credentials should perform initial evaluations, which are generally completed within one to two hours. A professional fluent in the primary language of the patient is preferred. When such a provider is not available, services of a professional language interpreter should be provided.

(a). Frequency: one-time visit for the clinical interview. If psychometric testing is indicated as a part of the initial evaluation, time for such testing should not exceed an additional nine hours of professional time.

(b). Clinical Evaluation. At the discretion of the evaluating physician, clinical evaluation may address the following areas:

(i). History of Injury. The history of the injury should be reported in the patient's words or using similar terminology. Caution must be exercised when using translators.

[a]. nature of injury;

[b]. psychosocial circumstances of the injury;

[c]. current symptomatic complaints;

[d]. extent of medical corroboration;

[e]. treatment received and results;

[f]. compliance with treatment;

[g]. coping strategies used, including perceived locus of control;

[h]. perception of medical system and employer;

[i]. history of response to prescription medications.

(ii). Health History

[a]. nature of injury;

[b]. medical history;

[c]. psychiatric history;

[d]. history of alcohol or substance abuse;

[e]. activities of daily living;

[f]. mental status exam;

[g]. previous injuries, including disability, impairment, and compensation

(iii). Psychosocial History

[a]. childhood history, including abuse;

[b]. educational history;

[c]. family history, including disability;

[d]. marital history and other significant adulthood activities and events;

[e]. legal history, including criminal and civil litigation;

[f]. employment and military history;

[g]. signs of pre-injury psychological dysfunction;

[h]. current interpersonal relations, support, living situation;

[i]. financial history.

(iv). Psychological test results, if performed.

(v). Danger to self or others.

(vi). Current psychiatric diagnosis consistent with the standards of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(vii). Pre-existing psychiatric conditions. Treatment of these conditions is appropriate when the pre-existing condition affects recovery from pain.

(viii). Causality (to address medically probable cause and effect, distinguishing pre-existing psychological symptoms, traits and vulnerabilities from current symptoms).

(ix). Treatment recommendations with respect to specific goals, frequency, timeframes, and expected outcomes.

(c). Tests of Psychological Functioning. Psychometric testing is a valuable component of a consultation to assist the physician in making a more effective treatment plan. Psychometric testing is useful in the assessment of mental conditions, pain conditions, cognitive functioning, treatment planning, vocational planning, and evaluation of treatment effectiveness. There is no general agreement as to which standardized psychometric tests should be specifically recommended for psychological evaluations of pain conditions. It is appropriate for the mental health provider to use their discretion and administer selective psychometric tests within their expertise and within standards of care in the community. Some of these tests are available in Spanish and other languages, and many are written at a sixth grade reading level. Examples of frequently used psychometric tests performed include, but not limited to, the following.

(i). Comprehensive Inventories for Medical Patients

[a]. Battery for Health Improvement, 2nd Edition (BHI-2). What it measures: depression, anxiety and hostility; violent and suicidal ideation; borderline, dependency, maladjustment, substance abuse, conflicts with work, family and physician, pain preoccupation, somatization, perception of functioning and others. Benefits: when used as a part of a comprehensive evaluation, can contribute substantially to the understanding of psychosocial factors underlying pain reports, perceived disability, somatic preoccupation, and help to design interventions. Serial administrations can track changes in a broad range of variables during the course of treatment, and assess outcome.

[b]. Millon Behavioral Medical Diagnostic (MBMD). What it measures - updated version of the Millon Behavioral Health Inventory (MBHI). Provides information on coping styles (introversive, inhibited, dejected, cooperative, sociable, etc), health habits (smoking, drinking, eating, etc.), psychiatric indications (anxiety, depression, etc), stress moderators (illness apprehension vs. illness tolerance, etc), treatment prognostics (interventional fragility vs. interventional resilience, medication abuse vs. medication competence, etc) and other factors. Benefits: when used as a part of a comprehensive evaluation, can contribute substantially to the understanding of psychosocial factors affecting medical patients. Understanding risk factors and patient personality type can help to optimize treatment protocols for a particular patient.

[c]. Pain Assessment Battery (PAB). What it measures: collection of four separate measures that are administered together. Emphasis on the assessment of pain, coping strategies, degree and frequency of distress, health-related behaviors, coping success, beliefs about pain, quality of pain experience, stress symptoms analysis, and others. Benefits: when used as a part of a comprehensive evaluation, can contribute substantially to the understanding of patient stress, pain reports and pain coping strategies, and help to design interventions. Serial administrations can track changes in measured variables during the course of treatment, and assess outcome.

(d). Comprehensive Psychological Inventories. These tests are designed for detecting various psychiatric syndromes, but in general are more prone to false positive findings when administered to medical patients.

(i). Millon Clinical Multiaxial Inventory, 3rd Edition (MCMI-III). What it measures: has scales based on DSM diagnostic criteria for affective, personality, and psychotic disorders and somatization. Benefits: when used as a part of a part of a comprehensive evaluation, can screen for a broad range of DSM diagnoses.

(ii). Minnesota Multiphasic Personality Inventory, 2nd Edition (MMPI-2). What it measures: original scale constructs, such as hysteria and psychesthenia are archaic but continue to be useful. Newer content scales include depression, anxiety, health concerns, bizarre mentation, social discomfort, low self-esteem, and almost 100 others. Benefits: when used as a part of a comprehensive evaluation, measure a number of factors that have been associated with poor treatment outcome.

(iii). Personality Assessment Inventory (PAI). What it measures: a good measure of general psychopathology. Measures depression, anxiety, somatic complaints, stress, alcohol and drug use reports, mania, paranoia, schizophrenia, borderline, antisocial, and suicidal ideation and more than 30 others. Benefits: when used as a part of a comprehensive evaluation, can contribute substantially to the identification of a wide variety of risk factors that could potentially affect the medical patient.

(e). Brief Multidimensional Screens for Medical Patients. Treating providers, to assess a variety of psychological and medical conditions, including depression, pain, disability and others, may use brief instruments. These instruments may also be employed as repeated measures to track progress in treatment, or as one test in a more comprehensive evaluation. Brief instruments are valuable in that the test may be administered in the office setting and hand scored by the physician. Results of these tests should help providers distinguish which patients should be referred for a specific type of comprehensive evaluation.

(i). Brief Battery for Health Improvement, 2nd Edition (BBHI-2). What it measures: depression, anxiety, somatization, pain, function, and defensiveness. Benefits: can identify patients needing treatment for depression and anxiety, and identify patients prone to somatization, pain magnification and self-perception of disability. Can compare the level of factors above to other

pain patients and community members. Serial administrations can track changes in measured variables during the course of treatment, and assess outcome.

(ii). Multidimensional Pain Inventory (MPI). What it measures: interference, support, pain severity, life-control, affective distress, response of significant other to pain, and self-perception of disability at home and work, and in social and other activities of daily living. Benefits: can identify patients with high levels of disability perceptions, affective distress, or those prone to pain magnification. Serial administrations can track changes in measured variables during the course of treatment, and assess outcome.

(iii). Pain Patient Profile (P3). What it measures: Assesses depression, anxiety, and somatization. Benefits: Can identify patients needing treatment for depression and anxiety, as well as identify patients prone to somatization. Can compare the level of depression, anxiety and somatization to other pain patients and community members. Serial administrations can track changes in measured variables during the course of treatment, and assess outcome.

(iv). SF-36. What it measures: a survey of general health well-being and functional states. Benefits: assesses a broad spectrum of patient disability reports. Serial administrations could be used to track patient perceived functional changes during the course of treatment, and assess outcome.

(v). Sickness Impact Profile (SIP). What it measures: perceived disability in the areas of sleep, eating, home management, recreation, mobility, body care, social interaction, emotional behavior, and communication. Benefits: assesses a broad spectrum of patient disability reports. Serial administrations could be used to track patient perceived functional changes during the course of treatment, and assess outcome.

(vi). McGill Pain Questionnaire (MPQ). What it measures: cognitive, emotional and sensory aspects of pain. Benefits: can identify patients prone to pain magnification. Repeated administrations can track progress in treatment for pain.

(vii). McGill Pain Questionnaire-Short Form (MPQ-SF). What it measures: emotional and sensory aspects of pain. Benefits: can identify patients prone to pain magnification. Repeated administrations can track progress in treatment for pain.

(viii). Oswestry Disability Questionnaire. What it measures: disability secondary to low back pain. Benefits: can measure patients' self-perceptions of disability. Serial administrations could be used to track changes in self-perceptions of functional ability during the course of treatment, and assess outcome.

(ix). Visual Analog Scales (VAS). What it measures: graphical measure of patient's pain report. Benefits: quantifies the patients' pain report. Serial administrations could be used to track changes in pain reports during the course of treatment and assess outcome.

(f). Brief Multidimensional Screens for Psychiatric Patients. These tests are designed for detecting various psychiatric syndromes, but in general are more prone to false positive findings when administered to medical patients.

(i). Brief Symptom Inventory. What it measures: Somatization, obsessive-compulsive, depression, anxiety, phobic anxiety, hostility, paranoia, psychoticism, and interpersonal sensitivity. Benefits: can identify patients needing treatment for depression and anxiety, as well as identify patients prone to somatization. Can compare the level of depression, anxiety, and somatization to community members. Serial administrations could be used to track changes in measured variables during the course of treatment, and assess outcome.

(ii). Brief Symptom Inventory-18 (BSI-18). What it Measures: depression, anxiety, somatization. Benefits: can identify patients needing treatment for depression and anxiety, as well as identify patients prone to somatization. Can compare the level of depression, anxiety, and somatization to community members. Serial administrations could be used to track patient perceived functional changes during the course of treatment, and assess outcome.

(iii). Symptom Check List 90 (SCL 90). What it measures: Somatization, obsessive-compulsive, depression, anxiety, phobic anxiety, hostility, paranoia, psychoticism, and interpersonal sensitivity. Benefits: Can identify patients needing treatment for depression and anxiety, as well as identify patients prone to somatization. Can compare the level of depression, anxiety and somatization to community members. Serial administrations could be used to track changes in measured variables during the course of treatment, and assess outcome.

(g). Brief Specialized Psychiatric Screening Measures

(i). Beck Depression Inventory (BDI). What it measures: Depression. Benefits: Can identify patients needing referral for further assessment and treatment for depression and anxiety, as well as identify patients prone to somatization. Repeated administrations can track progress in treatment for depression, anxiety, and somatic preoccupation.

(ii). Post Traumatic Stress Diagnostic Scale (PDS). What it Measures: Post Traumatic Stress Disorder (PTSD). Benefits: Helps confirm suspected PTSD diagnosis. Repeated administrations can track treatment progress of PTSD patients.

(iii). Center of Epidemiologic Studies-Depression Questionnaire. What it measures: Depression. Benefits: Brief self-administered screening test. Requires professional evaluation to verify diagnosis.

(iv). Brief Patient Health Questionnaire from PRIME - MD. What it measures: Depression, panic disorder. Benefits: Brief self-administered screening test. Requires professional evaluation to verify diagnosis.

(v). Zung Questionnaire. What it measures: Depression. Benefits: Brief self-administered screening test. Requires professional evaluation to verify diagnosis.

(vi). Diagnostic Studies. Imaging of the spine and/or extremities is a generally accepted, well-established, and widely used diagnostic procedure when specific indications, based on history and physical examination, are present. Physicians should refer to individual OWCA guidelines for specific information about specific testing procedures.

(vii). Radiographic Imaging, MRI, CT, bone scan, radiography, SPECT and other special imaging studies may provide useful information for many musculoskeletal disorders causing pain. Single Photon Emission Computerized Tomography (SPECT). A scanning technique which may be helpful to localize facet joint pathology and is useful in determining which patients are likely to have a response to facet injection. SPECT combines bone scans & CT Scans in looking for facet joint pathology.

(viii). Electrodiagnostic studies may be useful in the evaluation of patients with suspected myopathic or neuropathic disease and may include Nerve Conduction Studies (NCS), Standard Needle Electromyography, or Somatosensory Evoked Potential (SSEP). The evaluation of electrical studies is difficult and should be relegated to specialists who are well trained in the use of this diagnostic procedure.

(ix). Special Testing Procedures may be considered when attempting to confirm the current diagnosis or reveal alternative diagnosis. In doing so, other special tests may be performed at the discretion of the physician.

(x). Testing for complex regional pain syndrome (CRPS-I) or sympathetically maintained pain (SMP) is described in the Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy Medical Treatment Guidelines.

d. Provocation Discography

i. - vii.(b).(ii).[e].[i].bb. …

3. - 3.a.i. …

b. Functional capacity evaluation (FCE) is a comprehensive or modified evaluation of the various aspects of function as they relate to the worker's ability to return to work. FCEs should not be used as the sole criteria to diagnose malingering. Areas such as endurance, lifting (dynamic and static), postural tolerance, specific range of motion (ROM), coordination and strength, worker habits, employability as well as psychosocial, cognitive, and sensory perceptual aspects of competitive employment may be evaluated. Reliability of patient reports and overall effort during testing is also reported. Components of this evaluation may include: musculoskeletal screen; cardiovascular profile/aerobic capacity; coordination; lift/carrying analysis; job-specific activity tolerance; maximum voluntary effort; pain assessment/psychological screening; and non-material and material handling activities. Standardized national guidelines (such as National Institute for Occupational Safety and Health (NIOSH)) should be used as the basis for FCE recommendations.

i. When an FCE is being used to determine return to a specific jobsite, the provider is responsible for fully understanding the physical demands and the duties of the job that the worker is attempting to perform. A jobsite evaluation is frequently necessary. A job description should be reviewed by the provider and FCE evaluator prior to this evaluation. FCEs cannot be used in isolation to determine work restrictions. It is expected that the FCE may differ from both self-report of abilities and pure clinical exam findings. The length of a return to work evaluation should be based on the judgment of the referring physician and the provider performing the evaluation. Since return to work is a complicated multidimensional issue, multiple factors beyond functional ability and work demands should be considered and measured when attempting determination of readiness or fitness to return to work. The authorized treating physician must interpret the FCE in light of the individual patient's presentation and medical and personal perceptions. FCEs should not be used as the sole criteria to diagnose malingering.

ii. Depth and breadth of FCE should be assessed on a case-by-case basis and should be determined by tester and/or referring medical professional. In many cases, a work tolerance screening or return to work performance will identify the ability to perform the necessary job tasks. There is some evidence that a short form FCE reduced to a few tests produces a similar predictive quality compared to the longer two-day version of the FCE regarding length of disability and recurrence of a claim after return to work.

(a). Frequency. When the patient is unable to return to the pre-injury condition and further information is desired to determine permanent work restrictions. Prior authorization is required for repeat FCEs.

c. Jobsite Evaluation—a comprehensive analysis of the physical, mental, and sensory components of a specific job. The goal of the Jobsite evaluation is to identify any job modification needed to ensure the safety of the employee upon return to work. These components may include, but are not limited to: postural tolerance (static and dynamic); aerobic requirements; range of motion (ROM); torque/force; lifting/carrying; cognitive demands; social interactions; visual perceptual; sensation; coordination; environmental requirements of a job; repetitiveness; essential job functions; and ergonomic set up. Job descriptions provided by the employer are helpful but should not be used as a substitute for direct observation.

i. …

ii. Requests for a jobsite evaluation should describe the expected goals for the evaluation. Goals may include, but are not limited to the following:

(a). - (d). …

(e). to give detailed work/activity restrictions.

(i). Frequency—one time with additional visits as needed for follow-up per jobsite.

iii. Jobsite evaluation and alteration should include input from a health care professional with experience in ergonomics or a certified ergonomist, the employee, and the employer. The employee must be observed performing all job functions in order for the jobsite evaluation to be a valid representation of a typical workday. If the employee is unable to perform the job function for observation, a co-worker in an identical job position may be observed instead. Periodic follow-up is recommended to assess the effectiveness of the intervention and need for additional ergonomic changes.

d. Vocational Assessment. The vocational assessment should provide valuable guidance in the determination of future rehabilitation program goals. It should clarify rehabilitation goals, which optimize both patient motivation and utilization of rehabilitation resources. If prognosis for return to former occupation is determined to be poor, except in the most extenuating circumstances, vocational assessment should be implemented within 3 to 12 months post-injury. Declaration of Maximum Medical

Improvement (MMI) should not be delayed solely due to lack of attainment of a vocational assessment.

i. …

e. Work Tolerance Screening (Fitness for Duty) - a determination of an individual's tolerance for performing a specific job as based on a job activity or task and may be used when a full Functional Capacity Evaluation is not indicated. It may include a test or procedure to specifically identify and quantify work-relevant cardiovascular, physical fitness and postural tolerance. It may also address ergonomic issues affecting the patient's return-to-work potential.

i. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1658 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1137 (June 2014), LR 46:1246 (September 2020).

§2021. Therapeutic Procedures—Non-Operative

A. All treatment plans begin with shared decision making with the patient. Before initiation of any therapeutic procedure, an authorized treating healthcare provider, employer, and insurer should consider these important issues in the care of the injured worker.

B. …

C. Second, cessation and/or review of treatment modalities should be undertaken when no further significant subjective or objective improvement in the patient's condition is noted.

1. Reassessment of the patient's status in terms of functional improvement should be documented after each treatment. If patients are not responding within the recommended time periods, alternative treatment interventions, further diagnostic studies or specialist and/or surgeon consultations should be pursued. Continued treatment should be monitored using objective measures such as:

a. …

b. fewer restrictions at work or performing activities of daily living (ADL);

c. decrease in usage of medications; related to the work injury; and

d. measurable functional gains, such as increased range of motion, documented increase in strength;, increased ability to stand, sit or lift, or patient completed functional evaluations.

D. - F. …

G. Non-operative treatment procedures for low back pain can be divided into two groups: conservative care and rehabilitation. Conservative care is treatment applied to a problem in which spontaneous improvement is expected in 90 percent of the cases within three months. It is usually provided during the tissue-healing phase and lasts no more than six months, and often considerably less. Rehabilitation is treatment applied to a more chronic and complex problem in a patient with de-conditioning and disability. It is provided during the period after tissue healing to obtain maximal medical recovery. Treatment modalities may be utilized sequentially or concomitantly depending on chronicity and complexity of the problem, and anticipated therapeutic effect. Treatment plans should always be based on a diagnosis utilizing appropriate diagnostic procedures.

H. The following procedures are listed in alphabetical order.

1. Acupuncture

a. Acupuncture: the insertion and removal of filiform needles to stimulate acupoints (acupuncture points). Needles may be inserted, manipulated, and retained for a period of time. Acupuncture can be used to reduce pain, reduce inflammation, increase blood flow, increase range of motion, decrease the side effect of medication-induced nausea, promote relaxation in an anxious patient, and reduce muscle spasm.

a.i. - b.i. …

c. Total Time Frames for Acupuncture and Acupuncture with Electrical Stimulation: Time frames are not meant to be applied to each of the above sections separately. The time frames are to be applied to all acupuncture treatments regardless of the type or combination of therapies being provided.

i. - iii. …

iv. maximum duration: 14 treatments within six months.

(a). …

2. Biofeedback. A form of behavioral medicine that helps patients learn self-awareness and self-regulation skills for the purpose of gaining greater control of their physiology, such as muscle activity, brain waves, and measures of autonomic nervous system activity. Electronic instrumentation is used to monitor the targeted physiology and then displayed or fed back to the patient visually, auditorially, or tactilely, with coaching by a biofeedback specialist. Biofeedback is provided by clinicians certified in biofeedback and/or who have documented specialized education, advanced training, or direct or supervised experience qualifying them to provide the specialized treatment needed (e.g., surface EMG, EEG, or other). There is good evidence that biofeedback or relaxation therapy is equal in effect to cognitive behavioral therapy for low back pain. There is good evidence that cognitive behavioral therapy, but not behavioral therapy (e.g., biofeedback), shows weak to small effects in reducing pain and small effects on improving disability, mood, and catastrophizing in patients.

a. …

b. Indications for biofeedback include individuals who are suffering from musculoskeletal injury in which muscle dysfunction or other physiological indicators of excessive or prolonged stress response affects and/or delays recovery. Other applications include training to improve self-management of emotional stress/pain responses such as anxiety, depression, anger, sleep disturbance, and other central and autonomic nervous system imbalances. Biofeedback is often used in conjunction with other treatment modalities.

i. - iii. …

iv. maximum duration: 10 to 12 sessions. Treatment beyond 12 sessions must be documented with respect to need, expectation, and ability to facilitate functional gains.

3. Injections—Therapeutic

a. …

i. Special Considerations. For all injections (excluding trigger point), multi-planar fluoroscopic guidance during procedures is required to document technique and needle placement, and should be performed by a physician experienced in the procedure. Permanent images are required to verify needle replacement.

ii. - iii.(a). …

b. Epidural Steroid Injection (ESI)

i. - iii.(c). …

iv. Timing/Frequency/Duration

(a). Epidural injections may be used for radicular pain or radiculopathy. If an injection provides at least 50 percent relief, a repeat of the same pain relieving injection may be given at least two weeks apart with fluoroscopic guidance. No more than two levels may be injected in one session. If there is not a minimum of 50 percent pain reduction as measured by a numerical pain index scale and documented functional improvement, similar injections should not be repeated, although the practitioner may want to consider a different approach or different level depending on the pathology. Maximum of two series (six months apart) of three effective pain relieving injections may be done in one year based upon the patient's response to pain and function.

(b). Spinal Stenosis Patients

(i). Patients with claudication: The patient has documented spinal stenosis, has attempted active therapy, has persistent claudication symptoms and difficulty with some activities, thus meeting criteria for surgical intervention. The patient may have diagnostic injection as indicated. Patients who have any objective neurologic findings should proceed as the above patient with radicular findings for whom an early surgical consultation is recommended including indirect or direct decompression. Refer to C.1. Those who have mild claudication, or moderate or severe claudication and who do not desire surgery, may continue to receive additional injections if the original diagnostic intervention was successful per guideline standards.

c. Zygapophyseal (Facet) Injection

i. Description—an accepted intra-articular or pericapsular injection of local anesthetic and corticosteroid with very limited uses. Up to three joints. Either unilaterally or bilaterally. Injections may be repeated only. when there is 50 percent initial improvement in pain scales as measured by accepted pain scales (such as VAS), and a functional documented response lasts for three months. An example of a positive result would include a return to baseline function as established at MMI, return to increased work duties, or a measurable improvement in physical activity goals including retrun to baseline after an exacerbation. Injections may only be repeated when these functional and time goals are met and verified. May be repeated up to two times a year. There is no justification for a combined facet and medial branch block. Monitored Anesthesia Care is accepted for diagnostic and therapeutic procedures.

ii. Indications—patients with pain suspected to be facet in origin based on exam findings and affecting activity; or, patients who have refused a rhizotomy; or, patients who have facet findings with a thoracic component. In these patients, facet injections may be occasionally useful in facilitating a functionally-directed rehabilitation program and to aid in identifying pain generators. Patients with recurrent pain should be evaluated with more definitive diagnostic injections, such as medial nerve branch injections, to determine the need for a rhizotomy. Facet injections are not likely to produce long-term benefit by themselves and are not the most accurate diagnostic tool.

d. Sacroiliac Joint Injection

i. Description—a generally accepted injection of local anesthetic in an intra-articular fashion into the sacroiliac joint under fluoroscopic guidance. May include the use of corticosteroids. Sacroiliac joint injections may be considered either unilaterally or bilaterally. The injection may only be repeated with 50 percent improvement in Visual Analog Scale with documented functional improvement. For Sacroiliac Joint (lateral Branch Neurotomy), the diagnostic S1-S3 lateral branch blocks would need to be documented with 80 percent to 100 percent improvement in symptoms for the duration of the local anesthetic. Should the diagnostic lateral branch nerve blocks only result in 50 percent to 80 percent improvement in symptoms then the confirmatory nerve blocks are recommended. In the event that the diagnostic lateral nerve blocks result in less than 50 percent improvement, then the lateral branch neurotomy is not recommended. SI Joint fusion can be considered if multiple SI joint injections or RF Sacral Lateral Branches are ineffective to maintain function. Monitored Anesthesia Care is accepted for diagnostic and therapeutic procedures.

ii. …

iii. Timing/Frequency/Duration

(a). Frequency and optimum duration: two to three injections per year. If the first injection does not provide a diagnostic response of temporary and sustained pain relief substantiated by accepted pain scales, (i.e.,50 percent pain reduction substantiated by tools such as VAS), and improvement in function, similar injections should not be repeated. At least six weeks of functional benefit should be obtained with each therapeutic injection.

(b). Maximum duration: three injections per year.

e. Intradiscal Steroid Therapy

i. …

f. Radio Frequency (RF)—Medial Branch Neurotomy/Facet Denervation

i. Description—a procedure designed to denervate the facet joint (Thoracic and Lumbar) by ablating the corresponding sensory medial branches. Percutaneous radiofrequency is the method generally used. Pulsed radiofrequency at 42 degrees C should not be used as it may result in incomplete denervation. Cooled radiofrequency is generally not recommended due to current lack of evidence.

(a). If the medial branch blocks provide 80 percent or more pain reduction as measured by a numerical pain index scale within one hour of the medial branch blocks, then rhizotomy of the medial branch nerves, up to four nerves per side, may be done. If the first medial branch block provides less than 80 percent but at least 50 percent pain reduction as measured by a numerical pain index scale or documented functional improvement, the medial branch block should be repeated before a rhizotomy is performed. If

50 percent or greater pain reduction is achieved with two sets of medial branch blocks for facet joint pain, then rhizotomy may be performed.

(b). Generally, RF pain relief lasts at least six months and repeat radiofrequency neurotomy can be successful and last longer. RF neurotomy is the procedure of choice over alcohol, phenol, or cryoablation. Permanent images should be recorded to verify placement of the needles.

ii. Needle placement: multi-planar fluoroscopic imaging is required for all injections.

iii. Indications—those patients with proven, significant, facetogenic pain by medial branch block (as defined previously). This procedure is not recommended for patients with multiple pain generators except in those cases where the facet pain is deemed to be greater than 50 percent of the total pain in the given area.

iv. All patients should continue appropriate exercise with functionally directed rehabilitation. Active treatment, which patients will have had prior to the procedure, will frequently require a repeat of the sessions that may have been previously ordered prior to the facet treatment (Refer to Therapy-Active).

v. Complications-bleeding, infection, or neural injury. The clinician must be aware of the risk of developing a localized neuritis, or rarely, a deafferentation centralized pain syndrome as a complication of this and other neuroablative procedures.

vi. Post-Procedure Therapy—active therapy. Implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-procedure week, barring complications. Instruction and participation in a long-term home-based program of ROM, core strengthening, postural or neuromuscular re-education, endurance, and stability exercises should be accomplished over a period of four to ten visits post-procedure.

vii. Requirements for Repeat Radiofrequency Medial Branch Neurotomy (or other peripheral nerve ablation). In some cases pain may recur. Successful RF neurotomy usually provides from six to eighteen months of relief.

(a). Before a repeat RF neurotomy is done, a confirmatory medial branch injection or diagnostic nerve block should be performed if the patient's pain pattern presents differently than the initial evaluation. In occasional patients, additional levels of medial branch blocks and RF neurotomy may be necessary. The same indications and limitations apply.

g. Radio Frequency Denervation—Sacro-iliac (SI) joint. This procedure requires neurotomy of multiple nerves, such as L5 dorsal ramus, and/or lateral branches of S1-S3 under C-arm fluoroscopy.

i. Needle Placement: Multi-planar fluoroscopic imaging is required. Permanent images are suggested to verify needle placement.

ii. Indications

(a). The patient has physical exam findings of at least three positive physical exam maneuvers (e.g., Patrick's sign, Faber's test, Gaenslen distraction or gapping, or compression test). Insufficient functional progress during an appropriate program that includes active therapy and/or manual therapy.

(b). For sacroiliac joint (lateral branch neurotomy), the diagnostic S1-S3 lateral branch blocks would need to be documented with 80 percent to 100 percent improvement in symptoms for the duration of the local anesthetic. Should the diagnostic lateral branch nerve blocks only result in 50 percent to 80 percent improvement in symptoms then the confirmatory nerve blocks are recommended. In the event that the diagnostic lateral nerve blocks result in less than 50 percent improvement, then the lateral branch neurotomy is not recommended. SI Joint fusion can be considered for those unable to return to function due to with SI injections or RF sacral lateral branches.

iii. Complications: damage to sacral nerve roots—issues with bladder dysfunction etc. Bleeding, infection, or neural injury. The clinician must be aware of the risk of developing a localized neuritis, or rarely, a deafferentation centralized pain syndrome as a complication of this and other neuroablative procedures.

iv. Post-Procedure Therapy—active therapy: implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-procedure week, barring complications. Instruction and participation in a long-term home-based program of ROM, core strengthening, postural or neuromuscular re-education, endurance, and stability exercises should be accomplished over a period of 4 to 10 visits post-procedure.

v. Requirements for Repeat Radiofrequency SI Joint Neurotomy. In some cases, pain may recur. Successful RF neurotomy usually provides from 6 to 18 months of relief. Repeat neurotomy should only be performed if the initial procedure resulted in improved function for six months. There is no need for repeat Sacroiliac joint or lateral branch injection before RF. SI Joint fusion can be considered for those unable to return to function due to RF Sacral Lateral Branches that no longer last for six months.

h. Trigger Point Injections

i. Description. Trigger point injections are generally accepted treatment. Trigger point treatment can consist of injection of local anesthetic, with or without corticosteroid, into highly localized, extremely sensitive bands of skeletal muscle fibers. These muscle fibers produce local and referred pain when activated. Medication is injected in a four-quadrant manner in the area of maximum tenderness. Injection can be enhanced if treatments are immediately followed by myofascial therapeutic interventions, such as vapo-coolant spray and stretch, ischemic pressure massage (myotherapy), specific soft tissue mobilization and physical modalities. There is conflicting evidence regarding the benefit of trigger point injections. There is no evidence that injection of medications improves the results of trigger-point injections. Needling alone may account for some of the therapeutic response of injections. Needling must be performed by practitioners with the appropriate credentials in accordance with state and other applicable regulations.

(a). Conscious sedation for patients receiving trigger point injections may be considered. However, the patient must be alert to help identify the site of the injection.

ii. Indications. Trigger point injections may be used to relieve myofascial pain and facilitate active therapy and stretching of the affected areas. They are to be used as

an adjunctive treatment in combination with other treatment modalities such as active therapy programs. Trigger point injections should be utilized primarily for the purpose of facilitating functional progress. Patients should continue in an aggressive aerobic and stretching therapeutic exercise program, as tolerated, while undergoing intensive myofascial interventions. Myofascial pain is often associated with other underlying structural problems. Any abnormalities need to be ruled out prior to injection.

iii. Trigger point injections are indicated in patients with consistently observed, well circumscribed trigger points. This demonstrates a local twitch response, characteristic radiation of pain pattern and local autonomic reaction, such as persistent hyperemia following palpation. Generally, trigger point injections are not necessary unless consistently observed trigger points are not responding to specific, noninvasive, myofascial interventions within approximately a six-week time frame. However, trigger point injections may be occasionally effective when utilized in the patient with immediate, acute onset of pain or in a post-operative patient with persistent muscle spasm or myofascial pain.

iv. Complications. Potential but rare complications of trigger point injections include infection, pneumothorax, anaphylaxis, penetration of viscera, neurapraxia, and neuropathy. If corticosteroids are injected in addition to local anesthetic, there is a risk of local myopathy. Severe pain on injection suggests the possibility of an intraneural injection, and the needle should be immediately repositioned.

v. Timing/Frequency/Duration

(a). **…**

(b). Frequency: no more than four injection sites per session per week for acute exacerbations only to avoid significant post-injection soreness;

(c). Optimum duration/Maximum duration: four sessions per year. Injections may only be repeated when the above functional and time goals are met.

i. - i.i. …

4. - 4.b. …

5. Medications/Pharmacy. Medication use in the treatment of low back injuries is appropriate for controlling acute and chronic pain and inflammation. Use of medications will vary widely due to the spectrum of injuries from simple strains to post-surgical healing. All drugs should be used according to patient needs. A thorough medication history, including use of alternative and over the counter medications, should be performed at the time of the initial visit and updated periodically. Treatment for pain control is initially accomplished with acetaminophen and/or NSAIDs. The patient should be educated regarding the interaction with prescription and over-the-counter medications as well as the contents of over-the-counter herbal products. The following are listed in alphabetical order:

a. - g.ii. …

h. Lofexidine (Lucemyra)

i. Description: Central Alpha 2 Agonist.

ii. Indications: mitigation of opioid withdrawal symptoms to facilitate abrupt opioid discontinuation in adults.

iii. Major Contraindications: severe coronary insufficiency, recent myocardial infarction, cerebrovascular disease, renal failure, marked bradycardia, or prolonged QT Syndrome.

iv. Dosing and Time to Therapeutic Effect: three 0.18mg tablets 4 times a day for 7 days.

v. Major Side Effects: insomnia, orthostatic hypotension, bradycardia, hypotension, dizziness, somnolence, sedation, dry mouth.

vi. Drug Interactions. Any medications that decrease pulse or blood pressure to avoid the risk of excessive bradycardia and hypotension.

vii. Laboratory Monitoring. Monitor ECG in patients with congestive heart failure, bradyarrythmis, hepatic impairment, renal impairment, or patients taking othermedicinal products that lead to QT Prolongation.

6. Occupational Rehabilitation Programs

a. Non-Interdisciplinary. These generally accepted programs are work-related, outcome-focused, individualized treatment programs. Objectives of the program include, but are not limited to, improvement of cardiopulmonary and neuromusculoskeletal functions (strength, endurance, movement, flexibility, stability, and motor control functions), patient education, and symptom relief. The goal is for patients to gain full or optimal function and return to work. The service may include the time-limited use of passive modalities with progression to active treatment and/or simulated/real work.

i. Work Conditioning

(a). - (a).(iv). …

ii. Work Simulation

(a). - (a).(iv). …

(b). Interdisciplinary: programs are well-established treatment for patients with sub-acute and functionally impairing low back pain. They are characterized by a variety of disciplines that participate in the assessment, planning, and/or implementation of an injured worker's program with the goal for patients to gain full or optimal function and return to work. There should be close interaction and integration among the disciplines to ensure that all members of the team interact to achieve team goals. Programs should include cognitive-behavioral therapy as there is good evidence for its effectiveness in patients with chronic low back pain. These programs are for patients with greater levels of disability, dysfunction, de-conditioning and psychological involvement. For patients with chronic pain, refer to the OWCA's Chronic Pain Disorder Medical Treatment Guidelines.

(i). Work Hardening

[a]. - [b].[iv]. …

(ii). Spinal Cord Programs

[a]. …

[b]. This can include a highly structured program involving a team approach or can involve any of the components thereof. The interdisciplinary team should, at a minimum, be comprised of a qualified medical director who is board certified and trained in rehabilitation, a case manager, occupational therapist, physical therapist, psychologist, rehabilitation RN and MD, and therapeutic recreation specialist. As appropriate, the team may also include: rehabilitation counselor, respiratory therapist, social worker, or speech-language pathologist.

[c]. …

7. Orthotics

a. - b. …

c. Lumbar Corsets and Back Belts. There is insufficient evidence to support their use.

7.d. - 12.i.iv. …

13. Therapy—passive. Most of the following passive therapies and modalities are generally accepted methods of care for a variety of work-related injuries. Passive therapy includes those treatment modalities that do not require energy expenditure on the part of the patient. They are principally effective during the early phases of treatment and are directed at controlling symptoms such as pain, inflammation and swelling and to improve the rate of healing soft tissue injuries. They should be used adjunctively with active therapies such as postural stabilization and exercise programs to help control swelling, pain, and inflammation during the active rehabilitation process. Please refer to General Guideline Principles, Active Interventions. Passive therapies may be used intermittently as a therapist deems appropriate or regularly if there are specific goals with objectively measured functional improvements during treatment.

a. …

b. The following passive therapies are listed in alphabetical order.

i. - vi.(d). …

vii. Intramuscular Manual Therapy: Dry Needling. IMT involves using filament needles to treat "trigger points" within muscle. It may require multiple advances of a filament needle to achieve a local twitch response to release muscle tension and pain. Dry needling is an effective treatment for acute and chronic pain of neuropathic origin with very few side effects. Dry needling is a technique to treat the neuro-musculoskeletal system based on pain patterns, muscular dysfunction and other orthopedic signs and symptoms:

13.b.vii.(a). - 14.a. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1664 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1140 (June 2014), LR 46:1452 (September 2020).

§2023. Therapeutic Procedures—Operative

A. - F. …

G. Lumbar Operative Procedures and Conditions:

1. - 3.e. …

4. Laminotomy/Laminectomy/Foramenotomy/ Facetectomy for Central or Lateral Spinal Stenosis

a. Description - these procedures provide access to produce neural decompression by partial or total removal of various parts of spinous elements.

b. Complications—appropriate medical disclosures should be provided to the patient as deemed necessary by the treating physician.

c. Surgical indications include all of the following: radicular symptoms or symptoms of neurogenic claudication on exam, and failure of non-surgical care.

i. The non-operative improvement appears to be less likely for stenosis than for herniated discs.

d. Operative Treatment—laminotomy, laminectomy root decompression, and excision of synovial cyst.

e. Post-Operative Therapy—a formal physical therapy program should be implemented post-operatively. Active treatment, which patients should have had prior to surgery, will frequently require a repeat of the sessions previously ordered. The implementation of a gentle aerobic reconditioning program (e.g., walking) and back education within the first post-operative week is appropriate in uncomplicated post-surgical cases. Some patients may benefit from several occupational therapy visits to improve performance of ADLs. Participation in an active therapy program which includes restoration of ROM, core stabilization, strengthening, and endurance is recommended to be initiated three to six weeks post-operatively. The goals of the therapy program should include instruction in a long-term home based exercise program. (Refer to Therapy-Active).

5. Spinal Fusion

a. - h. …

6. Sacroiliac Joint Fusion

a. Description. Use of bone grafts, sometimes combined with metal devices, to produce a rigid connection between two or more adjacent vertebrae providing symptomatic instability as a part of major pelvic ring disruption.

i. Identifying the SI joint as the pain generator is challenging due to the multifactorial nature of low back pain. Once confirmed, management may include physical or manual therapy with a focus on core and pelvic stability, external orthodtics, periodic intra-articular injections, anti-inflammatory medications, and life style changes including smoking cessation and weight loss.

b. …

c. General Requirements.

i. Conservative management should include all of the following:

(a). activity modification;

(b). active therapeutic exercise program, physical therapy, or manual therapy;

(c). anti-inflammatory medications and analgesics; and

(d). cortcosteroid injection.

ii. Tobacco cessation. a tobacco-cessation program resulting in abstinence from tobacco for at least six weeks prior to surgery is recommended.

iii. Body Mass Index (BMI). Patient with a BMI equal to or greater than 40 should attempt weight loss prior to surgery.

d. Indications and Criteria.

i. Percutaneous/Minimally Invasive SI Joint Fusion may be considered medically necessary when all of the following criteria are met:

(a). persistent pain with a VAS of 5 or greater for more than six months' duration that interferes with functional activities;

(b). failure of conservative management for at least six months;

(c). confirmation of the SI joint as a pain generator as demonstrated by all of the following:

(i). pain pattern consistent with SI joint pain;

(ii). positive finger Fortin test (tenderness over the sacral sulcus);

(iii). lack of tenderness elsewhere in the pelvic region;

(iv). positive result from at least three provocative tests:

[a]. long ligament test;

[b]. Faber's test/Patrick's sign;

[c]. active straight leg raise;

[d]. compression test;

[e]. distraction test;

[f]. thigh thrust test; or

[g]. Gaenslen's test;

(v). and other sources of pain have been excluded as a cause;

(d). diagnostic studies that include all of the following:

(i). imaging (plain radiographs and a CT) or MRI of the SI joint;

(ii). AP plain radiograph of the pelvis to exclude hip pathology;

(iii). CT or MRI of the lumbar spine to rule out neural compression or other degenerative condition;

(iv). imaging of SI joint that indicates evidence of injury and/or degeneration;

(e). and confirmation of the SI joint as the pain generator. This can be demonstrated by at least 50 percent reduction of pain for the expected duration of the anesthestic utilized following an intra-articular SI joint injection. This must be done on two separate occasions.

e. Exclusions

i. Indications other than those addresses in this section are considered not medically necessary, including but not limited to the following:

(a). presence of infection, tumor, or fracture;

(b). acute, traumatic instability of the SI joint;

(c). presence of compression that correlates with symptoms or other more likely source of pain;

(d). generalized pain behavior such as somotoform disorder or generalized pain disorders like fibromyalgia; or

(e). ankylosing spondylitis or rheumatoid arthritis.

7. Implantable spinal cord stimulators are reserved for those low back pain patients with pain of greater than six months duration who have not responded to the standard non-operative or operative interventions previously discussed within this document. Refer to OWCA's Chronic Pain Disorder Medical Treatment Guidelines.

8. Laser discectomy involves the delivery of laser energy into the center of the nucleus pulposus using a fluoroscopically guided laser fiber under local anesthesia. The energy denatures protein in the nucleus, causing a structural change which is intended to reduce intradiscal pressure. Its effectiveness has not been shown. Laser discectomy is not recommended.

9. Artificial Lumbar Disc Replacement

a. - e. …

10. Kyphoplasty

a. - c. …

d. Surgical Indications. Kyphoplasty is an accepted treatment for the following indications:

i. - iii. …

e. Contraindications:

i. - vi. …

11. Vertebroplasty

a. …

b. Complications

i. - ii. …

c. Indications:

i. - iii. …

d. Contraindications:

i. - vi. …

12. Percutaneous radiofrequency disc decompression is an investigational procedure which introduces a 17 gauge cannula under local anesthesia and fluoroscopic guidance into the nucleus pulposus of the contained herniated disc, using radiofrequency energy to dissolve and remove disc material. Pressure inside the disc is lowered as a result. There have been no randomized clinical trials of this procedure at this time. Percutaneous radiofrequency disc decompression is not recommended.

13. Nucleus pulposus replacement involves the introduction of a prosthetic implant into the intervertebral disc, replacing the nucleus while preserving the annulus fibrosus. It is limited to investigational use in the United States at this time. It is not recommended.

14. Epiduroscopy and Epidural Lysis of Adhesions (Refer to Injections-Therapeutic).

15. Intraoperative neurophysiologic monitoring (IONM) is a battery of neurophysiologic tests used to assess the functional integrity of the spinal cord, nerve roots, and other peripheral nervous system structures (eg, brachial plexus) during spinal surgery. The underlying principle of IONM is to identify emerging insult to nervous system structures, pathways, and/or related vascular supply and to provide feedback regarding correlative changes in neural function before development of irreversible neural injury. IONM data provide an opportunity for intervention to prevent or minimize postoperative neurologic deficit. Current multimodality monitoring techniques permit intraoperative assessment of the functional integrity of afferent dorsal sensory spinal cord tracts, efferent ventral spinal cord tracts, and nerve roots. Combined use of these techniques is useful during complex spinal surgery because these monitoring modalities provide important complementary information to the surgery team. Intraoperative neurophysiologic monitoring should be used during spinal surgery when information regarding spinal cord and nerve root function is desired. The appropriate diagnostic modality for the proposed surgical intervention should be utilized at the discretion of the surgeon.

16. Non-invasive electrical bone growth stimulators may be considered:

a. as an adjunct to spinal fusion surgery for those at high risk for pseudoarthrosis, including one or more of the following fusion failure risk factors:

i. - iii. …

iv. presence of other risk factors that may contribute to non-healing:

(a). - (f). …

b. - c. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.1.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation Administration, LR 37:1676 (June 2011), amended by the Louisiana Workforce Commission, Office of Workers Compensation, LR 40:1151 (June 2014), LR 46:1256 (September 2020).

Ava Dejoie
Secretary

2009#019

Notices of Intent

NOTICE OF INTENT

Department of Children and Family Services
Economic Stability Section

Supplemental Nutrition Assistance Program (SNAP)
Electronic Benefits Issuance System
(LAC 67:III.401 and 403)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend the *Louisiana Administrative Code* (LAC), Title 67, Part III Economic Stability.

Pursuant to the authority granted to the department by the Food and Nutrition Act of 2008 in accordance with federal regulations for the Supplemental Nutrition Assistance Program (SNAP) in 7 CFR, the department considers these amendments necessary to clarify or adopt rules that govern the Supplemental Nutrition Assistance Program.

LAC 67:III, Subpart 1 General Administrative Procedures, Section 401 is being amended to update the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP). Section 403 is being amended to update the name of the Food Stamp Program to the Supplemental Nutrition Assistance Program and to change the number of days when SNAP benefits are issued each month.

Title 67
SOCIAL SERVICES
Part III. Economic Stability
Subpart 1. General Administrative Procedures
Chapter 4. Electronic Benefits Issuance System
§401. Electronic Benefits Transfer (EBT)

A. Economic Stability programs utilize an electronic benefits issuance system referred to as Electronic Benefits Transfer (EBT) that allows eligible individuals and households to have their governmental benefits deposited into an account to pay for products purchased or to obtain authorized cash payments. Programs that utilize the EBT are Family Independence Temporary Assistance Program (FITAP), Kinship Care Subsidy Program (KCSP), and Supplemental Nutrition Assistance Program (SNAP) Benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1, 7 CFR 274.12 and 45 CFR 95(F). Section 404(g) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:1231 (December 1996), amended LR 23:869 (July 1997), LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), amended by the Department of Children and Family Services, Economic Stability Section, LR 46:

§403. Cash Benefits
[Formerly §402]

A. Cash benefits and Supplemental Nutrition Assistance Program (SNAP) benefits shall be available through EBT in staggered cycles to on-going households beginning on the first day of each month. The last digit of the Social Security number determines the date that benefits are issued. Cash benefits will be available within the first five days of each month. SNAP benefits will be available within the first 23 days of each month. SNAP cases that contain elderly or disabled persons will have benefits available during the first four days of each month. Other issuance authorizations will be posted to the EBT account the day after they are authorized except in emergency circumstances in which case benefits will be available on the same day.

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 365 days from the date of availability will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998) amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Division of Family Support, LR 44:23 (January 2018), amended by the Department of Children and Family Services, Economic Stability Section, LR 46:

Family Impact Statement

The proposed Rule is not anticipated to have an adverse impact on family formation, stability, and autonomy as described in R.S. 49:972. The amount of costs or savings due to these changes are indeterminate.

Poverty Impact Statement

The proposed Rule is not anticipated to have a significant negative impact on poverty as described in R.S. 49:973.

Small Business Impact Statement

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through, October 27, 2020, to Shavana Howard, Assistant Secretary of Family Support, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804.

Public Hearing

A virtual public hearing on the proposed rule will be held at 10 a.m. on October 27, 2020, by the Department of Children and Family Services. All interested persons will be afforded an opportunity to submit data, views, or arguments via PC, Mac, Linux, iOS or Android at https://stateofladcfs.zoom.us/j/97697236896?pwd=UXVuY1QrWjBnSjNRQUFDOUtrSmRoZz09 using password

672290; or via telephone by dialing (713)353-0212 and entering conference code 848054. To find local AT&T numbers visit https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=848054. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Marketa Garner Walters
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Supplemental Nutrition Assistance Program (SNAP)—Electronic Benefits Issuance System

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

As a result of the rule change, the Department of Children and Family Service (DCFS) anticipates spending $75,260 (50% SGF and 50% Federal) in FY 21 to make programming changes to its computer systems. Additionally, DCFS will incur $852 (50% SGF and 50% Federal) in the expenses associated with the publication of this proposed rule change.

The proposed rule change makes technical updates by changing the name of the Food Stamp program to the Supplemental Nutrition Assistance Program (SNAP). This rule also provides that SNAP benefits will be made available to SNAP recipients within the first 23 days of each month, instead of the first 14 days.

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

The proposed Rule change will not affect revenue collections for state or local governmental units.

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

During the first month of implementation, SNAP recipients may be delayed in receiving their monthly benefits for up to 9 days. After the first month, benefits will be made available to recipients on a regularly set date between the 1st and 23rd of the month.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this proposed rule is not expected to have an effect on competition and employment.

Shavana Howard	Christopher A. Keaton
Assistant Secretary	Legislative Fiscal Officer
2009#045	Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development
Office of Business Development

Enterprise Zone Program (LAC 13:I.Chapter 7)

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104, hereby proposes to amend the Rules for the Enterprise Zone Program (R.S. 51:1787, et seq.) to better align the rules with current statutory provisions and administrative practices, as required by portions of Act 18 of the 2016 First Extraordinary Session and Act 28 of the 2020 First Extraordinary Session of the Louisiana Legislature.

Title 13
ECONOMIC DEVELOPMENT
Part I. Financial Incentive Programs
Chapter 7. Enterprise Zone Program
§701. General

A. - B …

C. Effective date of Act 423 of the 2013 Regular Session

1. The provisions of Act 423 shall apply to advance notification filed on or after June 1, 2013 and prior to April 1, 2016.

D. Effective date of Act 18 of the 2016 First Extraordinary Session.

1. The provisions of Act 18 shall apply to advance notification filed on or after April 1, 2016, except as provided below.

a. A retail business, hotel or restaurant with an assigned NAICS Code of 44,45,721 or 722, which has no more than 50 employees nationwide including affiliates prior to the contract effective date, and which files or enters into an advance notification on or after July 1, 2020, and before December 31, 2021, shall be eligible to receive benefits. However, no such business shall be eligible to earn benefits pursuant to this section after June 30, 2023.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:252 (March 1991), amended by Department of Economic Development, Office of Commerce and Industry, LR 22:446 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2298 (November 2003), LR 37:2368 (August 2011), LR 40:490 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§702. Eligibility criteria and available incentives

A. Eligibility

1. This program is available to a Louisiana business that will:

a. create jobs. Create permanent full-time net new jobs that are at least equal to the lesser of:

i. five jobs, created within the first two years of the contract period; or

ii. the number of jobs equal to a minimum of 10 percent of the employees employed throughout the United States by the business and its affiliates, a minimum of one, created within the first year of the contract period;

iii. for good cause shown, the board may grant an extension of not more than two years to comply with the above job creation requirements;

b. hire from targeted groups.

i. A business located in an urban enterprise zone, or a business not located in either an enterprise zone, or economic development zone shall certify that at least 50% of the employees filling net new jobs are from one of the following target groups:

(a). residents. Someone living in any enterprise zone in Louisiana;

(b). a person receiving an approved form of public assistance during the six months prior to employment;

(c). a person considered to be lacking in basic skills, i.e. performing below a ninth grade proficiency in reading, writing or mathematics.

(d). a person considered unemployable by traditional standards.

ii. A business located in a-rural enterprise zone, an economic development zone, or an enterprise zone in Calcasieu Parish shall certify that at least 50 percent of the employees filling net new jobs are from one of the target groups identified above in §702 A.1.b.i; or

(a). a resident of the same parish as the project site.

2. The following businesses shall not be eligible to participate in the program:

a. businesses with gaming on site;

b. churches;

c. residential developments, including but not limited to the construction, selling, or leasing of single-family or multi-family dwellings, apartment buildings, condominiums or town houses.

d. employment agencies, with an assigned NAICS Code of 5613 and advance notifications filed on or after April 1, 2016.

3. The following businesses are subject to certain limitations and restrictions:

a. for a multi-tenant facility to be eligible for the benefits of this Chapter, the business must meet one of the following criteria:

i. occupy a minimum of 33 percent of the total floor area of the building;

ii. tenants are businesses new to the state;

iii. tenants are Louisiana businesses increasing their number of locations within the state by placing a new location within this facility;

iv. tenants are relocating within Louisiana and will generate the minimum of new job credits over and above the total jobs at their previous location;

b. retail establishments. No retail business with an NAICS code of 44, 45, or 722 is eligible to participate in the program unless:

i. an advance notification was filed on or after June 21, 2013 and before July 1, 2015:

(a). retail establishments that are assigned a North American industry classification code beginning with 44 or 45 and have more than 100 employees nationwide including affiliates prior to the contract effective date are not eligible to participate unless:

(i). the business is a grocery store or pharmacy as defined by LED; and

(ii). the business is located in an enterprise zone;

(b). however, if a retail establishment filed an advance prior to July 1, 2015, but did not enter into an EZ contract prior to July 1, 2015, it cannot claim EZ incentives until on or after July 1, 2016; or

ii. for retailers with no more than 50 employees nationwide including affiliates, an advance notification was filed on or after July 1, 2020 and before December 31, 2021. However, no such retail business shall be eligible to earn benefits after June 30, 2023;

c. employment agencies. No business with an NAICS code of 5613 is eligible to participate in the program unless it filed an advance notification prior to April 1, 2016;

d. hotels. A business with an assigned NAICS Code of 721 shall be ineligible to receive benefits, unless:

i. an advance notification was filed prior to April 1, 2016; or

ii. for businesses with no more than 50 employees nationwide including affiliates, an advance notification was filed on or after July 1, 2020 and before December 31, 2021. However, no such business shall be eligible to earn benefits after June 30, 2023.

B. Available Incentives. The following incentives are available for Louisiana businesses meeting program eligibility criteria.

1. Job Tax Credit. A one-time tax credit for each net new job created, with the benefit amount to be calculated as follows:

a. for projects for which the advance notification form is filed prior to April 1, 2016 a one-time tax credit of $2,500 for each net new job; or

b. for projects for which the advance notification form is filed on or after April 1, 2016 a one-time tax credit of $1,000 for each net new job, unless the following conditions are met;

i. the net new employee for which the credit is being claimed was receiving Supplemental Nutrition Assistance Program (SNAP). Women, Infants and Children (WIC), Medicaid or unemployment benefits, during the six-month period prior to employment; or

ii. the net new employee is hired by a participating business located in an enterprise zone;

iii. the amount of the credit for each net new employee meeting these conditions shall be $3,500 for each net new job; or

c. for a business in the aviation and aerospace industries as defined in the NAICS industries 336411, 336412, 336413 or 33291, a one-time tax credit of $5,000 for each net new job;

d. in addition to the job tax credits provided for in this section, a one-time tax credit of $2,500 for each recipient of temporary assistance for needy families (TANF) hired by a business. The TANF recipient must receive compensation which will disqualify them from continued participation in TANF and must be employed for two years to generate the additional tax credit. An employer shall not obtain the jobs tax credit for more than 10 TANF employees in the first year of participation in the program;

e. limitations to the job tax credit.

i. Position Limitations

(a). For projects with advance notifications filed before April 1, 2016, job tax credits shall only be calculated based upon a position within the state that did not previously exist in the business, and that is filled by a person who is a citizen of the United States and who is domiciled in Louisiana, or who is a citizen of the United States and becomes domiciled in Louisiana within 60 days of employment in such position, performing duties as a regular, full-time employee.

(b). For projects with advance notifications filed on or after April 1, 2016, job tax credits shall only be calculated based upon a position within the state that is in

excess of the median statewide number of employees of the business, including affiliates, and meeting the above requirements of B 1.e.i.(a).

ii. Credit Amount Limitations. The total number of credits granted to a business for employees who are citizens of the United States and who become domiciled in Louisiana within 60 days after employment, shall not exceed 50 percent of the total number of job tax credits granted to the business under the contract.

2. Sales and use tax rebate or refundable investment tax credit as follows:

a. sales and use tax. Rebates of sales and use taxes imposed by the state, and sales and use taxes imposed by its political subdivisions upon approval of the governing authority of the appropriate taxing political subdivision, on all eligible purchases during a specified project period of not more than 30 months:

i. sales and use taxes imposed by a political subdivision which are dedicated to the repayment of bonded indebtedness or dedicated to schools shall not be eligible for rebate;

ii. a business seeking a local sales and use tax rebate must obtain an endorsement resolution specific to the project from each political subdivision levying the taxes to be rebated. The endorsement resolution must clearly state the intention to rebate sales and use taxes as allowable for the project. The endorsement resolution must be adopted prior to board approval of the application, or if the project cost is greater than one hundred million dollars, prior to the project ending date; or

b. refundable investment tax credit. In lieu of the sales and use tax rebates, a refundable investment tax credit equal to one and one-half percent of the amount of qualified expenditures for assets that are located at the project site and are placed in service during the project period, and are in accordance with the provisions of §731 and §732;

c. limitations to the rebate of sales and use taxes and the investment tax credit.

i. A business shall not receive any sales and use tax rebate or investment tax credit until it has provided all documentation necessary to illustrate compliance with program requirements, including but not limited to filing an annual certification report and proof of the creation of net new jobs.

ii. For purposes of determining the maximum sale and use tax rebate or income tax credit allowed, each net new job shall be counted once.

iii. For projects with advance notifications filed on or after April 1, 2016, the amount of sales and use tax or investment tax credit granted shall not exceed one hundred thousand dollars per net new job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 46:

§703. Definitions

Act 423—Act 423 of the 2013 Regular Session of the Louisiana Legislature

Act 18—Act 18 of the 2016 First Extraordinary Session of the Louisiana Legislature

* * *

Employment Baseline—

1. the baseline from which net new jobs are determined, to be calculated as follows:

a. for projects with advance notifications filed with business incentives services prior to June 21, 2013, *employment baseline* will be determined in accordance with prior policy and practice in place at the time of the filing of the advance notification.

b. for projects with advance notifications filed with business incentives services on or after June 21, 2013 but prior to April 1, 2016,

i. the median number of full time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the twelve months prior to the contract effective date) at the project site, during the payroll periods including the twelfth day of the month, in the last four months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months); or

ii. the last annual average number of full time employees certified under an enterprise zone contract for the business that was in effect on the day prior to the contract effective date;

c. for projects with advance notifications filed with business incentives services on or after April 1, 2016 but prior to the effective date of the 2020 rule promulgation,

i. equal to the median number of full time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the twelve months prior to the contract effective date) statewide, during the payroll periods including the twelfth day of the month, in the last four months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months).

d. for projects with advance notifications filed with business incentives services after the effective date of the 2020-rule promulgation,

i. equal to the median number of full time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the twelve months prior to the contract effective date) statewide, during the payroll periods including the twelfth day of the month, in the last twelve months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining ten months).

2. the baseline must be maintained in any year for which the business requests job tax credits;

* * *

Public Assistance—

1. for projects with advance notifications filed with business incentives services prior to the effective date of the 2020 rule promulgation, public assistance shall be determined in accordance with prior policy and practice in place at the time of the filing of the advance notification, and

shall be any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependent upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their hire date.

2. for projects with advance notifications filed with business incentives services after the effective date of the 2020 rule promulgation, public assistance shall be limited to the following public assistance programs; Supplemental Nutrition Assistance Program (SNAP), Women, Infants, and Children (WIC), Medicaid and unemployment benefits. Any such assistance must have been received by the individual within a six-month period prior to their hire date.

* * *

Unemployment Benefits—shall be limited to temporary financial assistance to workers who are unemployed through no fault of their own and who meet the requirements of the Louisiana Employment Security Law.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2299 (November 2003), amended LR 37:2369 (August 2011), LR 40:491 (March 2014), amended by the Department of Economic Development, Office of Business Development, LR 46:

§705. Job Calculation Methodology

A. When determining program eligibility, compliance, computation of job tax credits, sales and use tax rebates or investment tax credits, the department shall employ the following methodology;

1. Program eligibility and compliance.

a. When calculating whether 50% of employees are hired from identified target groups, the department does not recognize partial number of employees, so anything over a whole number is rounded up to the next higher whole number.

b. The number of jobs shall be determined by averaging the first twelve-month period, and then by separately averaging the second twelve-month period. The department will not combine periods to perform one average calculation for a twenty-four-month period.

2. Computation of job tax credits. When calculating the amount of job tax credits, the department shall not recognize decimal numbers, but instead will round down to the nearest whole number and only recognize and award tax credits based upon whole numbers.

3. Computation of net new jobs as it relates to the maximum $100,000 sales and use tax rebate or investment tax credit per net new job. The department shall use the whole number computed for issuance of job tax credits.

4. Post Act 18 baseline calculation. Two baseline numbers shall be determined, as follows;

a. A statewide baseline, equal to the median number of statewide, full-time employees of the business (including employees of affiliates, and employees of unrelated affiliates who have also been employed by the business within the 12 months prior to the contract effective date); and

b. A project site baseline, equal to the median number of full-time employees at the project site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 46:

§709. Targeted Employees for a Business in an Urban Enterprise Zone

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003), LR 37:2372 (August 2011), LR 40:494 (March 2014), amended by the Department of Economic Development, Office of Business Development, LR 46:

§711. Targeted Employees for a Business in a Rural Enterprise Zone

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:254 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:448 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), LR 37:2372 (August 2011), LR 40:494 (March 2014), amended by the Department of Economic Development, Office of Business Development, LR 46:

§713. Targeted Employees for a Business in an Economic Development Zone

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011), LR 40:494 (March 2014), repealed by the Department of Economic Development, Office of Business Development, LR 46:

§715. Targeted Employees for a Business Not in an Enterprise Zone or Economic Development Zone

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011), LR 40:494 (March 2014), repealed by the Department of Economic Development, Office of Business Development, LR 46:

§716. Electronic Submittals

A. The department shall only allow submission of information electronically using Fastlane or any other electronic data submittal program provided by the department.

B. Electronic documents will be accepted by the department in satisfaction of the requirements of department regulations, notwithstanding any other department regulation to the contrary, including but not limited to an electronic contract document executed in whole or part with electronic signatures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 46:

§717. Annual Employee Certification

A. An annual employee certification report (ECR) must be filed with the business incentive services on all active contracts validating program compliance. An ECR fee of $250 shall be submitted with the report. Failure to file may result in contract cancellation. One 30-day extension may be granted if requested in writing if the request is received prior to the due date of the ECR.

1. Employee certification report filings shall report Company employees working at the project site for a twelve-month period, and shall be due within six months of the anniversary of the contract effective date, or the Governor's signature on the contract, whichever is later.

2. In the case of early contract terminations, a Company may submit final employee certification reports containing data for varying project time periods as approved in writing by the department.

3. The department may request additional information necessary to verify benefit eligibility. The Company must provide all requested information, or other documentation as approved by the department, within one hundred and eighty days. Failure to do so within the prescribed timeframe shall result in the expiration of the ECR and require re-submission.

4. If the employee certification report is submitted after the filing deadline, the amount of the job tax credit shall be reduced by 5 percent for each month or portion of a month late, up to a maximum reduction of 100 percent after 20 months.

a. Except as otherwise approved by the secretary for good cause shown. Good cause may include but not be limited to events beyond the reasonable control of the parties, such as an act of God, an act of war, an act of terrorism, a cyberattack, or a natural disaster due to earthquake, landslide, fire, flood, tornado, tropical storm or hurricane. The business shall have the burden to establish good cause.

B. If the employee certification report substantiates that the business has not created the permanent full-time net new jobs required for program eligibility, the board shall cancel the contract and the business shall refund all credits and rebates received. If not timely paid in compliance with the contract, the department will notify Department of Revenue of the contract violation, and the business will be subject to the provisions of §737.

C.- D.2. …

E. While Company's may elect to terminate contracts prior to their scheduled expiration date, early terminations may not be conducted in such a manner as to abuse the purpose and intent of the program to be limited to a period of five years. Therefore Company's that elect early contract termination shall be restricted from applying for a new contract at the same project site until the end of the five year period, as outlined in the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003), amended LR 37:2373 (August 2011), LR 40:494 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§721. Advance Notification

A. An advance notification form, and a $250 fee, shall be filed with business incentive services prior to the beginning of the project. All incentives for the same project must be indicated on one advance notification and be identified by one project number. Internet filing of the advance notification may be made at the department website.

B. An advance notification shall include but not be limited to a project description, estimated number of jobs, payroll, costs, project start and end dates. The project start date shall not exceed 12 months after the advance filing date and in no instance shall the project period exceed 30 months. Dates may be amended by the applicant if the written request is made prior to the estimated project ending date. An advance notification expires ~~one year~~ ninety days after the estimated project ending date shown on the advance notification, unless an application is timely filed, or a written date revision request is received by business incentive services prior to the expiration date~~.~~ but in no instance shall exceed 45 months after the advance filing date.

C. …

D. A business proposing a project exceeding 30 months must separate the project into phases with no phase having a project period greater than 30 months. The business must comply with program eligibility requirements, and file a separate advance notification, application, project completion report, and affidavit of final cost, with the required fees, for each phase of the project. The business must elect either the sales and use tax rebate or the investment tax credit for all phases of the project. Businesses electing the investment tax credit are not subject to the 50 percent limitation of §731.B for phases subsequent to the initial phase, and may elect to file one investment tax credit claim for all consecutive project periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2302 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§723. Application

A. …

1. Applications must include sufficient information to verify program compliance. LED reserves the right to request missing information, which shall be provided to LED within 30 days. Applications with missing or inadequate information after this time frame shall be considered late filings.

B. - C. …

D. An application must be submitted to business incentive services at least 45 days prior to the board meeting

where it is intended to be presented for approval. Applications may be deferred to a later board meeting date at the request of the applicant, but in no instance shall exceed presentation at a board meeting occurring more than 6 months after the filing of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2373 (August 2011), LR 40:495 (March 2014), LR 42:867 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§725. Recommendations of the Secretaries of Economic Development and Revenue

A. …

B. The department must receive a letter-of-no-objection or a letter-of-approval from the LDR, prior to submitting the application to the board for action.

C. If LDR issues an objection to an application, the applicant has six months to clear the objection or the application shall be cancelled by the department. The six-month period shall begin on the date LED sends written notification to the company of the objection received from LDR.

1. Except that the department may, in its sole discretion, grant an extension in the following circumstances;

a. Active negotiation. An extension may be granted to applicants which demonstrate active negotiation to LED by providing written documentation of ongoing, bilateral communications between the applicant or its representative and LDR as applicable, even if such communication begins after the objection was issued, or other written verification as approved by LED.

i. the extension shall not exceed six months, and an application with an active, unresolved objection shall be cancelled by the department one year after sending written notification to the company of the objection.

b. Litigation. The department may grant an extension to applicants which demonstrate active litigation with LDR, including but not limited to submission of a written complaint or petition, as approved by LED.

i. the extension shall be valid during the pendency of the action, but shall not exceed five years.

c. As otherwise approved by the secretary for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003), amended LR 37:2374 (August 2011), LR 40:495 (March 2014), LR 42:868 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§729. Enterprise Zone Program Contract

A. Upon approval of the application, the board shall enter into a contract with the business for the benefits allowed by this Chapter. The business must execute its portion of the contract and return it to Business Incentive Services within 60 days.

1. For projects with contract effective dates prior to the effective date of the 2020 rule promulgation, if the contract is not returned within 60 days, the board may rescind the approval of the application.

2. For projects with contract effective dates after the effective date of the 2020 rule promulgation, if the contract is not returned within 90 days, the board's approval shall be deemed rescinded.

3. When the contract has been fully executed, a copy will be sent to the business, the Department of Revenue, and if applicable, sent to the political subdivision.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014), LR 42:868 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§731. Project Completion

A. Within six months after the project ending date or the governor's signature on the contract, whichever is later, the business shall file with business incentive services, on the prescribed form, a project completion report and an affidavit of final cost. A project completion report fee of $250 and an affidavit of final cost fee of $250 shall be submitted with these forms or any amendments to these forms.

1. Any outstanding or final employee certification reports shall be submitted to LED prior to, or along with, a project completion report submission.

2. The department may grant an extension of 30 days for the filing of a project completion report, provided the written request for extension is received prior to the filing deadline.

3. If the project completion report is submitted after the filing deadline, the amount of the investment tax credit, or sales and use tax rebate shall be reduced by 5 percent for each month or portion of a month late, up to a maximum reduction of 100 percent after 20 months.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 37:2374 (August 2011), amended LR 40:496 (March 2014), LR 42:868 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§741. Multi-Tenant Facility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003), amended LR 40:497 (March 2014), repealed by the Department of Economic Development, Office of Business Development, LR 46:

§751. Effective Date of Act 423 of the 2013 Regular Session

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 423 of the 2013 Regular Session.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 40:498 (March 2014), repealed by the Department of Economic Development, Office of Business Development, LR 46:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

The modifications to the Enterprise Zone Program could cause a direct economic impact on some small retail, restaurants and hotels that have no more than 50 employees who are newly eligible for the program, if meeting certain criteria. However, the benefit from additional funding received, at a nominal cost of some additional planning and paperwork associated with the application process and reporting requirements should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Stephanie Le Grange through the close of business on Monday, October 26, 2020 at Department of Economic Development, 617 North 3rd Street, 11th Floor, Baton Rouge, LA 70802 or via email to Stephanie.Legrange@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 3 p.m. on Tuesday, October 27, 2020 in the LaBelle Conference Room at the LaSalle Building, 617 North 3rd Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Enterprise Zone Program

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

There is no impact on expenditures of the Department of Economic Development (LED) as a result of the proposed rules establishing guidelines for the Enterprise Zone Program. The program encourages job creation in rural enterprise zones, urban enterprise zones, or economic development zones by offering job tax credits, or sales and use tax rebates or refundable investment tax credits to qualifying businesses. The proposed amendments align the rules with the current statutory provisions and administrative practices as required by Act 18 of 2016 IES and Act 28 of 2020 IES. Administration of the program will be carried out utilizing existing staff and resources at LED.

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

There will be increased revenues (decreased costs) to the State General Fund (Direct) to the extent that entities take advantage of the tax credits pursuant to Act 18 of 2016 IES, which implemented restrictions to the program. Based upon LED historical data, the increases in revenue are as follows: 1) increased revenue (decreased costs) of $2 M by FY 22 and beyond due to changing the job tax credit, from $2,500 to $3,500, per net new job for employees receiving public assistance 6 months prior to employment or those projects located in enterprise zones, and decreasing the job credit to $1,000 for all others; 2) increased revenue (decreased costs) of as much as $20.5 M for FY 22 and beyond from limiting the sales rebate and investment tax credits to $100,000 per net new job; and 3) increased revenue (decreased costs) of $2 M for FY 22 and beyond from the elimination of employment services and living accommodations from program eligibility. The actual cost of the Enterprise Zone program in FY 15 was $46.9 M, including job credits and sales tax rebate/investment credits.

There will be decreased revenues (increased costs) to the State General Fund (Direct) to the extent that entities take advantage of the tax credits pursuant to Act 28 of 2020 IES, which extends the program as a whole by allowing advance notification filings up to July 1, 2026. Current program costs range near $25 M annually for credit and rebate realizations. Allowing the program to stop accepting participation as of July 1, 2021 would result in a gradual phase-down of annual revenue costs over roughly a five-year period. The extension of the current program will prevent this from occurring. The annual dollar distribution of this phase-down, based upon LED's assessment of the historical lag time between entry into the program and benefit claims, will result in the cumulative annual revenue loss relative to the baseline: $0 in FY 21; $5M in FY 22; $15 M in FY 23; $22.5 M in FY 24; and $25 M in FY 25.

Act 28 of 2020 IES further expanded the program to allow businesses classified as retail, restaurants, and hotels, that have no more than 50 employees nationwide including affiliates, into the program with advance notification filings from July 1, 2020 to December 31, 2021. Eligibility to earn benefits terminates after June 30, 2023. The extent of qualifying participation in the program is speculative, however, based upon historical claims, much of this program cost is likely to be the investment tax credit component, and the state's exposure is estimated to be: $0 in FY 21; $150,000 in FY 22; $300,000 in FY 23; $225,000 in FY 24; $75,000 in FY 25.

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

The income of new businesses participating in the program may decrease in comparison to existing approved businesses due to the heightened eligibility criteria and decreased benefits.

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.

Anne G. Villa	Gregory V. Albrecht
Undersecretary	Chief Economist
2009#027	Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development
Office of Business Development

Quality Jobs Program
(LAC 13:I.Chapter 11)

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 36:104, hereby proposes to amend the rules for the Quality Jobs Program (R.S. 51:2451, et seq.) to better align the rules with current statutory provisions and administrative practices, as required by portions of Act 386 of the 2017 Regular Session and Act 29 of the 2020 First Extraordinary Session of the Louisiana Legislature.

Title 13
ECONOMIC DEVELOPMENT
Part I. Financial Incentive Programs
Chapter 11. Quality Jobs Program
§1101. General

A.- B1. …

2. The employer may be entitled to sales and use tax rebates or the project facility expense rebate–authorized in R.S. 51: 2456 (B) (1), in addition to the requirements of this Chapter.

C. Effective date of Act 387 of the 2007 Regular Session

1. The provisions of Act 387 shall apply to all advance notification filed prior to July 1, 2017, except as provided below.

2. - 4 …

D. Effective Date of Act 386 of the 2017 Regular Session

1. The provisions of Act 386 shall apply to advance notifications filed on or after July 1, 2017, except as provided below.

a. a COVID-19-impacted retail business, hotel or restaurant, that has no more than 50 employees nationwide including affiliates on the date of the filing of the advance notification and which is assigned a NAICS Code of 44, 45, 721, or 722, and which files or enters into an advance notification on or after July 1, 2020, and on or before December 31, 2021, shall be eligible for benefits. However, no such COVID-19-impacted business employer shall be eligible to earn benefits pursuant to the provisions of this Chapter after June 30, 2023.

2. The provisions of Act 387 shall apply to advance notifications for companies meeting the provisions of Section 4 of Act 386, as approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2305 (November 2003), amended by the Office of Business Development, LR 37:2587 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1103. Definitions

Act 386—Act 386 of the 2017 Regular Session of the Louisiana Legislature

* * *

Approved Rehire Employees—a former employee who was previously on the payroll of the Company, parent entity, subsidiary, or affiliate in Louisiana, but has been off such payroll for a period of at least twelve months, may be considered a New Direct Job if rehired into a position that is not part of the Baseline Jobs. When determining New Direct Job qualifications, the department shall consider all relevant factors including but not limited to; ES4's, W2's and Company re-hiring practices, and the intent of the program to permanently locate new or expand existing operations in Louisiana.

Basic Health Benefits Plan or the Health Insurance Coverage—that which is required to be offered shall include individual coverage for basic hospital care, coverage for physician care, and coverage for health care which shall be the same as that provided to executive, administrative, or professional employees. Coverage must become effective no later than the first day of the month 90 days after hire date. For companies subject to provisions of Act 386, the coverage shall be in compliance with federally mandated health care requirements but if no such federally mandated requirements exist, the coverage for the employer portion of employee only coverage shall have a value of at least one dollar and twenty-five cents per hour.

Benefit Rate—one of the following percentages:

1. contracts subject to the provisions of Act 386:

a. the benefit rate shall be 4 percent for new direct jobs which pay at least $18 per hour in wages;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least $21.66 per hour in wages

2. contracts subject to the provisions of Act 387:

a. the benefit rate shall be 5 percent for new direct jobs which pay at least $14.50 per hour in wages and health care benefits;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least $19.10 per hour in wages and health care benefits;

c. health care benefits paid shall be the value of the health care benefits plan elected by an employee, as determined by the department;

3. contracts not subject to the provisions of Act 386 or Act 387:

a. the benefit rate shall be 5 percent for new direct jobs which pay at least 1 3/4 times the federal minimum hourly wage rate;

b. the benefit rate shall be 6 percent for new direct jobs which pay at least 2 1/4 times the federal minimum hourly wage rate and meet one of the following criteria:

i. the new direct jobs are located in a distressed region, or at least 50 percent of the new direct jobs shall be filled by persons who reside in a distressed region;

ii. the new direct jobs are with an employer categorized in a traditional or seed cluster targeted by the department.

* * *

Corporate Headquarters of a Multi-State Business—a multi-state business whose primary function is identified by NAICS 55114.

COVID-19-Impacted Retail Business—a for-profit corporation, a limited liability company, a partnership, or a sole proprietorship that had a physical and active operation in Louisiana on March 13, 2020, and ceased operations due to either one of the governor's public health emergency proclamations or a mayor's proclamation or executive order related to the public health emergency, or a decrease in customer activity or the inability to retain sufficient staff due to the COVID-19 public health emergency, as approved by the Department.

* * *

Distressed Region—for companies subject to the provisions of Act 387, as designated by the department:

1. a parish with a per capita income in the lowest 25 percent of the parishes; or

2. a census tract and block group that is below the state median per capita income, based on the most recent federal decennial census.

Domicile—the place of a person's principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent. Workers in the United States who are working on an H-1B Visa are not deemed to be domiciled in Louisiana.

Employment Baseline—the median statewide number of employees of an employer, including affiliates, working the average hours per week required in §1105, excluding employees engaged in lines of business that the department determines are unrelated to the activities for which quality job program benefits are sought, during the payroll periods including the twelfth day of the month, in the last twelve months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining ten months). The employment baseline must be maintained in any year for which the employer requests payroll rebates. The employment baseline may be reduced by the number of employees retained and continued in employment for at least one year by an unrelated third party business acquiring a site or line of business.

* * *

Multi-State Business—a business entity operating in more than one state, with a physical presence in more than one state, as approved by the department.

LED—the Louisiana Department of Economic Development

* * *

New Direct Job—employment at a Louisiana site:

1. of an employee:

a. whose domicile is in the state of Louisiana;

b. working the average hours per week required by §1105; and

c. who prior to the contract effective date was not on the payroll in Louisiana of:

i. the employer;

ii. the employer's parent entity, subsidiary, or affiliate; or

iii. any business whose physical plant and employees were or are substantially the same as those of the employer, unless either:

(a). there has been an arm's length transfer of ownership between unrelated companies (not affiliates), and either the location has been out of operations for at least three months; or

(b). the secretary determines that the jobs would have likely been lost to the state absent the transfer (under such circumstances jobs at the re-opened plant are deemed not to have previously existed for purposes of Subparagraph 2.b. below); or

(c) the employee is an Approved Rehire Employee.

2. in a job (a position of employment) that:

a. is with an employer that has qualified for the incentive rebate;

b. did not exist in this state prior to the advance notification being filed by the employer with the department pursuant to the provisions of R.S. 51:2455; and

c. is not part of the employment baseline;

d. is based at the project site, as determined by the department considering the employee's physical work site, the site to which the employee reports or which administers the employment, the site from which the employee receives work, and the nature of the business;

3. the following jobs are not new direct jobs:

a. jobs created as a result of the employer securing a contract to supply goods and services in the state of Louisiana, if another business was under an obligation to supply the same goods and services from a facility located in Louisiana and such obligation was terminated within three months prior to creation of the job by the employer;

b. jobs transferred, or jobs associated with work or sales transferred, from other Louisiana sites as a result of the employer (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation.

Physical Presence—the department may, in its sole discretion, consider all relevant evidence in evaluating multi-state presence, including, but not limited to; the location of offices, facilities, tangible property and employees. Ancillary services provided through use of technology, without more, shall be insufficient to establish a physical presence.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2306 (November 2003), amended by the Office of Business Development, LR 37:2588 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1105. Qualified Employers

A. For companies subject to the provisions of Act 387, to qualify for a Quality Jobs Program contract, an employer must meet the following requirements.

1 - 5d. …

B. For companies subject to the provisions of Act 386, to qualify for a Quality Jobs Program contract, an employer must meet the following requirements.

1. Eligible Businesses. The nature of the employer's business must fall within one of the following categories;

a. the employer is in one of the following industries:

i. biotechnology, biomedical, and medical industries serving rural hospitals;

ii. micromanufacturing;

iii. software, Internet or telecommunications technologies;

iv. clean energy technology;

v. food technologies; or

vi. advanced materials.

b. the employer is a manufacturer whose primary function is identified by NAICS Codes 113310, 211, 213111, 541360, 311-339, 511-512, or 54171;

c. the employer is an oil and gas field services business identified by the NAICS Code 213112, that has Louisiana as the national or regional headquarters of a multi-state business whose service territory includes at least Louisiana and the Gulf of Mexico;

d. the employer is a business that has, or within one year will have, at least 50 percent of its total annual sales to:

i. out-of-state customers or buyers;

ii. in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or

iii. the federal government;

iv. an independent Louisiana certified public accountant shall annually verify that the contract site meets the out-of-state sales requirement, in accordance with guidelines provided by the department.

e. the employer is a business that is located in a parish which is within the lowest twenty-five percent of parishes based on per capita income. Such designation shall be maintained during the contract period, including any renewal period.

f. the employer is the corporate headquarters of a multi-state business;

g. the employer is a business that spends 50 percent or more of its time performing services for its out-of-state parent company. These services include, but are not limited to, legal, marketing, finance, information technology, order management, distribution center operations or overall operations support.

h. the employer is in the business of maintenance, repair, and overhaul operations for commercial transport aircraft.

2. Ineligible Businesses. The following employers or persons shall not be eligible for benefits provided under this Chapter:

a. retail employers identified by NAICS Code Sections 44 and 45, except that;

i. COVID-19-impacted retail employers identified by the NAICS Codes of 44 and 45 that have no more than 50 employees nationwide including affiliates on the date of the filing of the advance notification shall be eligible to participate in this rebate program if such employers file or enter into an advance notification on or after July 1, 2020, and on or before December 31, 2021. However, no such COVID-19-impacted retail business employer shall be eligible to earn benefits pursuant to the provisions of this Chapter after June 30, 2023.

b. business associations and professional organizations identified by NAICS Code 8139;

c. state and local government enterprises;

d. real estate agents, operators, and lessors;

e. automotive rental and leasing;

f. local solid waste disposal, local sewage systems, and local water systems businesses;

g. nonprofit organizations, unless the department determines that the new direct jobs created by the organization would have a significant impact on Louisiana;

h. employers engaged in the gaming industry identified by NAICS Code sections 713210 and 721120; and

i. professional services firms assigned a NAICS code beginning with 54, unless the business can demonstrate that more than 50 percent of its services are provided to out-of-state customers or for the corporate headquarters of a multi-state business or if the employer can demonstrate that the company has or will have one year sales of at least 50 percent of its total sales out-of-state customers or buyers, to in-state customers or buyers or buyers if the products or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government.

j. construction companies, unless the company is the corporate headquarters of a multi-state business or can demonstrate that the company has, or will have within one year, sales of at least 50 percent of its total sales to either out-of-state customers or the federal government.

k. all businesses assigned a NAICS code beginning with 5613.

l. medical professionals assigned a NAICS code beginning with 62, except for those engaged in biomedical industries, biotechnology industries or those who provide services to rural hospitals or those who provide services or will within one year provide services to a patient base made up of at least 50 percent out-of-state patients.

m. Out-of-state sales or out-of-state patient requirements can be demonstrated by submission of documents including, but not limited to, a report issued by an independent Louisiana certified public accountant, in accordance with guidelines provided by the department.

3. Minimum New Direct Jobs and Annual Gross Payroll

a. New Direct Jobs. The employer must create a minimum of:

i. 5 new direct jobs for companies who employ 50 or fewer baseline employees; or

ii. 15 new direct jobs for companies who employ more than 50 baseline employees.

b. Annual Gross Payroll. The employer must have an annual gross payroll of:

i. equal to or greater than $225,000, for companies who employ 50 or fewer employees prior to the beginning of the contract, or

ii. jobs equal to or greater than $675,000, for companies who employ more than 50 employees prior to the beginning of the contract.

c. The employer shall have the required annual payroll for new direct jobs and the minimum number of new direct jobs for the employer's fiscal year for which the employer is applying for its third annual rebate, or the contract is cancelled and any rebates received must be repaid.

4. Full-Time Employee Work Hours

a. The employer must employ full-time employees working 30 or more hours per week in new direct jobs.

5. Health Benefits. The employer must offer, or will offer within 90 days of the contract effective date, a basic health benefits plan or health insurance coverage to the individuals it employs in new direct jobs, in compliance with federally mandated healthcare requirements or, if no federally mandated healthcare requirements exist, is determined to have a value of at least $1.25 per hour. The employer must offer health insurance coverage for the dependents of full-time employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry,

Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2307 (November 2003), amended by the Office of Business Development, LR 37:2590 (September 2011), LR 42:865 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1107. Application Fees, Timely Filing

A. …

B. An application for the Quality Jobs Program must be filed with the Office of Business Development, Business Incentives Services, through the department's online Fastlane portal no later than 24 months after the department has received the advance notification and fee, except that upon request, a business shall receive a 30-day extension of time in which to file its application, provided that the request for extension is received by the department no later than the filing deadline. Failure to file an application within the prescribed timeframe will result in the expiration of the advance notification.

1. The application shall include a detailed project description clearly stating the nature and scope of the proposed project. For example, whether the project is the construction of a new facility, renovation of an existing facility, or an increase in workforce. Where possible, identify specific project goals, milestones and costs that may be verified by both the department and LDR for subsequent contract compliance review.

2. Applications submitted by COVID-19 impacted retail businesses shall include support documentation evidencing a physical and active operation in Louisiana on March 13, 3 2020, and that it ceased operations due to either one of the governor's public health emergency proclamations or a mayor's proclamation or executive order related to the public health emergency, or a decrease in customer activity or the inability to retain sufficient staff due to the COVID-19 public health emergency.

C. - C3. …

D. An application to renew a contract shall be submitted with an application fee and filed six months prior to the initial contract expiring. The board may approve a request for renewal of an expired contract filed less than five years after expiration of the initial contract, and may impose a penalty for the late filing of the renewal request, including a reduction of the five-year renewal period.

1. The application for renewal shall include a detailed project description clearly stating the nature and scope of the proposed project. The application may revise or update the original project description, but must be within the nature and scope of the project description originally proposed and approved.

E. …

F. Applications may be deferred to a later board meeting date at the request of the applicant, but in no instance shall exceed presentation at a board meeting occurring more than 6 months after the filing of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), LR 41:1085 (June 2015), LR 42:865 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR

§1109. Application Review and Determination

A. - A1. …

2. The application packet must be completed through the department's online Fastlane portal by the due date. If the application is incomplete, the department may request additional information prior to further action. The application fee must accompany the application packet pursuant to §1107.C.

3. …

4. LED reserves the right to request missing information, which shall be provided to LED within 30 days. Applications with missing or inadequate information after this time frame shall be considered late filings.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1111. Consultation with the LWC and the LDR

A. …

B. The department must receive a letter-of-no-objection or a letter-of-approval from the LWC and the LDR, prior to submitting the application to the board for action.

C. If LWC or LDR issues an objection to an application, the applicant has six months to clear the objection or the application shall be cancelled. The six-month period shall begin on the date the department notifies the company of the objection received from LWC or LDR.

1. Except that the department may, in its sole discretion, grant an extension in the following circumstances.

a. Active Negotiation. An extension may be granted to applicants which demonstrate active negotiation to the department by providing written documentation of ongoing, bilateral communications between the applicant or its representative and LWC or LDR as applicable, even if such communication begins after the objection was issued, or other written verification as approved by the department.

i. the extension shall not exceed six months, and an application with an active, unresolved objection shall be cancelled by the department one year after notifying the company of the objection.

b. Litigation. The department may grant an extension to applicants which demonstrate active litigation with LDR, including but not limited to submission of a written complaint or petition, as approved by the department.

i. the extension shall be valid during the pendency of the action, but shall not exceed five years.

c. As otherwise approved by the department for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:866 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1117. The Contract

A. The board, after no objection from the executive director of the LWC and secretary of the LDR, and with the approval of the governor, may enter into a contract with an employer for a period up to five years. The business must execute its portion of the contract and return it to Business Incentive Services within 90 days. If the contract is not returned within 90 days, the board's approval shall be deemed rescinded.

1. …

2. Upon written approval of the department, an employer may have one additional contract in effect for a project site for a subsequent expansion project that is distinct from the project associated with the original contract, and that increases the number of new direct jobs at the site by at least 50 percent. If new direct jobs are not increased by at least 50 percent by the end of the third fiscal year of the additional contract, the contract shall be terminated and all benefits for the site shall be determined under the original contract.

3 - 5. …

6. A contract shall be limited to one employer receiving payroll rebates at the project site, however the employer's named affiliate may receive a sale and use tax rebate or project facility expense rebate for their expenditures directly relating to the project site if; a) the employer meets all program requirements; b) the affiliate is disclosed by the employer in its application and c) the affiliate is listed in the contract attachment Schedule One, which may be amended with the approval of the department and the board.

7. A fee of $250 shall be filed with a request for any contract amendment, including but not limited to, a change of ownership, change in name, or change in location.

B. - F.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011), LR 42:866 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1118. Project Completion Reports

A. All companies, whether seeking a payroll rebate, sales and use tax rebate or project facility expense rebate, shall file a minimum of one project completion report as follows.

1. An applicant may file a preliminary project completion report no earlier than with its third fiscal year filing.

2. An applicant shall file a final project completion report within six months after the project ending date or the governor's signature on the contract, whichever is later.

3. No more than two project completion reports (one preliminary and one final report) may be filed per five-year contract period.

4. Project completion reports shall be submitted through the department's online Fastlane portal.

5. A fee of $250 shall accompany all project completion report filings, or any project completion report amendment filings.

B. The project completion report shall confirm the beginning of the project, the project ending date, and the incentive benefits elected. Local sales and use tax rebate is not available if the project facility expense rebate is elected. The project facility expense rebate may not be elected if more than 50 percent of the qualified expenditures related to the project (including intangible costs such as architectural and/or engineering fees prior to construction) are incurred before the filing of the advance notification.

C. The project completion report shall list all eligible purchases and qualified expenditures for the project, with a description of the buildings, equipment, or other assets, and the cost of each item.

D. After completion of the project and the governor's signature of the contract, the department shall sign the project completion report and forward copies to the business, the Department of Revenue, and any political subdivision rebating local sales and use tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 46:

§1119. Payroll Incentive Rebates

A. - I. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1120. Sales and Use Tax Rebate or Project Facility Expense Rebate

A. Project Facility Expense Rebate

1. The project facility expense rebate is earned in the year in which the project is placed in service, and is based upon all qualified capitalized expenditures related to the project as of the date it is placed in service.

2. The project facility expense rebate claim must be filed with the Department of Revenue, Office Audit Division, with the required documentation.

3. The project facility expense rebate may be taken on qualified expenditures that are related to the project and are placed in service during the project period. The project facility expense rebate applies to the assets that are related to the qualified expenditures, provided that the business

reasonably intends for such assets to remain at the project site for their expected useful life. The assets may be recorded on the financial statements of a company that is an affiliate of the business.

4. The claim for the project facility expense rebate must be filed with the Department of Revenue no later than six months after the governor's signature of the contract and the department's signature of the project completion report, and must be accompanied by the signed project completion report. Upon request, the business shall receive a 30-day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim provided that the business shows reasonable cause for granting such extension.

B. Sales and Use Tax Rebates

1. The Quality Jobs Program contract will not authorize the business to make tax exempt purchases from vendors. The Department of Revenue will advise the business on the proper procedures to obtain the state sales and use tax rebate. The request for rebate of sales and use taxes must be made by filing a claim with the Department of Revenue, Office Audit Division, and must include the following:

a. list of eligible purchases, including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales and use tax paid. The listed items must have been purchased by the business, or by a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the business at the project site or by the contract holders named affiliates listed in the Quality Jobs Program contract;

b. certification that the listed materials are reasonably expected to qualify for a rebate under the Quality Jobs Program; and

c. certification that state sales and use taxes have been paid on the listed items.

2. The request may be filed on the official Department of Revenue "claim for rebate" form or on other forms prepared by the business. After the Department of Revenue has validated the information on the claim for rebate, a rebate check will be issued for the amount of substantiated state sales and use taxes paid.

3. The request for rebate must be filed with the Louisiana Department of Revenue, and the political subdivision rebating local sales and use tax, no later than six months after the Department of Economic Development signs a project completion report and sends it to the Department of Revenue, the political subdivision, and the business, or no later than 30 days after the end of the calendar year and must be accompanied by the signed project completion report. Upon request, the business shall receive a 30-day extension of time in which to file its claim, provided such request for extension is received by the Department of Revenue prior to the expiration of such filing period. The Department of Revenue is also authorized to grant the business an additional extension of time, not to exceed 60 days, in which to file its claim, provided that the business shows reasonable cause for granting such extension.

4. The business should contact the political subdivision issuing the endorsement resolution to determine the procedure for local sales and use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 46:

§1121. Rebate Payments

A. In addition to the payroll rebates, an employer shall be entitled to sales and use tax rebates or the project facility expense rebate as authorized in R.S. 51: 2456, if the employer meets the hiring requirements of the Quality Jobs Program and meets the other limitations, procedures, and requirements of R.S. 51:2456 and 2457 and the rules promulgated there under, Louisiana Administrative Code, Title 13, Part I, Chapter 11.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011), amended by the Department of Economic Development, Office of Business Development, LR 46:

§1123. Rebate Claim Filing

A. Payroll Rebate

1. An annual certification and a fee of $250 shall be filed annually, commencing within 6 months after completion of the applicant's fiscal year or execution of the contract, whichever is later. The department may grant an extension of up to an additional 30 days provided the extension is requested prior to the filing deadline. Failure to file an annual certification within the prescribed timeframe shall result in a penalty equal to the amount of the annual rebate being reduced by 5 percent for each month or portion of a month late–up to a maximum reduction of 100 percent after 20 months. An annual certification is required in each year the contract is active, irrespective of whether annual rebates are being claimed.

2. - 4. …

5. If the actual verified annual gross payroll for the employer's third fiscal year does not show a minimum of 15 or five new direct jobs and does not equal or exceed a total annual payroll for new direct jobs of either $675,000 or $225,000, whichever is applicable, the employer will be determined to be ineligible under this Chapter. The LDR will be notified and the tax liability for the current tax period in which the failure to meet the requirements occurs shall be increased by the amount of rebates previously allowed.

6. …

B. Sales and Use Tax Rebate or Project Facility Expense Rebate

1. An annual employee certification report with a $250 annual employee certification report fee must be filed on all active contracts for the employer to qualify for the sales and use tax rebate or project facility expense rebate under this Chapter.

2. Sales and Use Tax Rebate or Project Facility Expense Rebate–Advance Notification. An employer who

receives a Quality Jobs Act contract and who meets the requirements for sales and use tax rebates as authorized in R.S. 51: 2456 and §1121 of these rules, will satisfy the advance notification requirement for sales and use tax rebates or project facility expense rebate for the Quality Jobs Act contract by submission of the Quality Jobs Act Program advance notification referred to in §1107 of these rules. The sales and use tax rebate or project facility expense rebate period shall begin on the contract effective date, unless otherwise provided in the contract, and shall be no longer than 5 years, and shall not extend beyond the term of the Quality Jobs Act contract. In order to receive rebates of local sales and use taxes, the employer must satisfy the provisions of §1121.B of these rules.

3. Subsequent Sales and Use Tax Rebate/ Project Facility Expense Rebate Periods. On the expiration of the initial sale and use tax rebate or project facility expense rebate period under the Quality Jobs Act contract, the employer may file additional advance notifications on Form, "Quality Jobs Act Sales and Use Tax Rebate/ Project Facility Expense Rebate–Advance Notification," to seek additional state and local sales and use tax rebates or project facility expense rebates during the renewal contract period as authorized in R.S. 51:2456 and §1121 of these rules if the employer meets the hiring requirements as defined in the Quality Jobs Program Act and meets the other limitations, procedures, and requirements of R.S. 51: 2456 and 2457 and the rules promulgated thereunder, Louisiana Administrative Code, Title 13, Part I, Chapter 11, for a-subsequent sales and use tax rebate or project facility expense rebate period during the renewal term of the Quality Jobs Act contract. The subsequent sales and use tax rebate or project facility expense rebate period shall be no longer than the 5year renewal contract period. The local endorsement resolution requirements of §1121.B shall apply to the subsequent sales and use tax rebate period for which the employer under a Quality Jobs Act contract seeks the rebate of local sales and use taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011), LR 42:866 (June 2016), amended by the Department of Economic Development, Office of Business Development, LR 46:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

The modifications to the Quality Jobs Program could cause a direct economic impact on some small COVID-19 impacted retail, restaurants and hotels that have no more than 50 employees who are newly eligible for the program, if meeting certain criteria. However, the benefit from additional funding received, at a nominal cost of some additional planning and paperwork associated with the application process and reporting requirements should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Stephanie Le Grange through the close of business on Monday, October 26, 2020 at Department of Economic Development, 617 North 3rd Street, 11th Floor, Baton Rouge, LA 70802 or via email to Stephanie.Legrange@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 2 p.m. on Tuesday, October 27, 2020 in the LaBelle Conference Room at the LaSalle Building, 617 North 3rd Street, Baton Rouge, LA 70802

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Quality Jobs Program

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

There is no impact on expenditures of the Department of Economic Development (LED) as a result of the proposed rules establishing guidelines for the Quality Jobs Program. The program encourages certain businesses to locate or expand existing operations in Louisiana by offering rebates directly related to the new direct jobs created and the new annual gross payroll generated. The program offers payroll incentive rebates and sales and use tax rebate or project facility expense rebates. The proposed amendments align the rules with the current statutory provisions and administrative practices as required by portions of Act 386 of 2017 and Act 29 of 2020 IES. Administration of the program will be carried out utilizing existing staff and resources at LED.

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

There will be increased revenues (decreased costs) to the State General Fund (Direct) to the extent that entities take advantage of the tax credits pursuant to Act 386 of 2017, which implemented extensive changes and restrictions to the program. Using data from applications submitted for FY 14-16 and FY 16 participating wages, the changes in revenue are as follows: 1) increased revenue up to $7.9 M by FY 22 and beyond, from raising the eligibility hourly wage from $14.50 to $18.00 to receive a 4% subsidy and from $19.10 to $21.66 to receive a 6% subsidy; 2) increased revenue up to $4.3 M by FY 22 and beyond, by increasing the job count requirement from 5 to 15 for businesses with 50 or more employees; and 3) increased total revenue from the program is estimated up to $25 M in FY 22 and beyond. Revenue derived is realized by the state fisc as greater net state tax receipts.

There will be decreased revenues (increased costs) to the State General Fund (Direct) to the extent that entities take advantage of the tax credits pursuant to the changes in the program as enacted in Act 29 of 2020 IES. The program allows businesses classified as COVID-19 impacted retail, hotels and restaurants, that have no more than 50 employees nationwide including affiliates, to participate in the program with advance notification filings from July 1, 2020 to

December 31, 2021. Eligibility to earn benefits terminates after June 30, 2023. The extent of qualifying participation in the program, is speculative; however, assuming 1% of the potentially eligible firms qualifying for participation and being rebated 4% of the minimum amount of participating payroll (5 employees at $18/hour for 30 hours per week for 52 weeks) results in $1.6 million per year of state payroll rebate cost exposure.

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

The income of new businesses participating in the program may decrease in comparison to existing approved businesses due to the heightened eligibility criteria and decreased benefits.

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.

Anne G. Villa	Gregory V. Albrecht
Undersecretary	Chief Economist
2009#026	Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development
Office of the Secretary

Angel Investor Tax Credit Program
(LAC 13:I.Chapter 33)

Under the authority of R.S.47:6020 through 6020.4 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 amend the rules for the administration of the Angel Investor Tax Credit Program.

The purpose of this regulation is to implement legislative changes to the Angel Investor Tax Credit program under R.S. 47:6020 as enacted by Act 22 of the 2020 Special Session of the Louisiana Legislature.

Title 13
ECONOMIC DEVELOPMENT
Part I. Financial Incentive Programs
Chapter 33. Angel Investor Tax Credit Program

§3303. Accredited Investor

A.1.-3…

4. the investment in the Louisiana Entrepreneurial Business must be maintained for three years unless otherwise approved by the Department of Economic Development;

5. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or partnership shall not exceed that person's share of the profits of the LLC.

B.1.-4…

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3495 (December 2011), amended by Department of Economic Development, Office of the Secretary, LR 46:

§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits

A. …

1. For calendar year 2011, the department will begin accepting applications on September 1, and for all other calendar years, the department will begin accepting applications on January 1. The allocation of credits for all years will be administered on a first come, first serve basis until the annual $3,600,000 cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated.

a. - e. …

f.i. Any returned reservation credits whose businesses could not provide proof of investment within 120 days, will be allocated when available on a first come, first serve basis until the annual cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated. Returned reservation credits will be made available the sooner of:

(a). the day returned reservation credits exceed the amount of credits requested in applications in line to receive credits the next day; or

(b). the day all 120-day proof of investment periods have expired.

ii. …

g. A business that fails to provide proof of investment on the full reservation amount within 120 days will not be allowed to apply for angel investor credits again for a three-month period. The three-month period will begin on the day following the end of the 120-day period for proof of investment.

B. - E. …

F. The Angel Investor Tax Credit Program has a program cap of three million six hundred thousand dollars in tax credits granted per calendar year. If the department does not grant the entire $3,600,000 in tax credits in any calendar year, the amount of residual unused tax credits shall carry forward to subsequent calendar years and may be granted in any year without regard to the three million six hundred thousand dollar per year limitation. No tax credit shall be granted to an investor until the investment has been made in the Louisiana Entrepreneurial Business.

G. For purposes of receiving angel investor tax credits, an investor may not invest more than seven hundred twenty thousand dollars per year per business or more than $1,440,000 total per business over the life of the program. The credit shall be allowed against the income tax for the taxable period in which the credit is earned and the franchise tax for the taxable period following the period in which the credit is earned. The credits approved by the department shall be granted

at the rate of 25 percent of the amount of the investment with the credit divided in equal portions for two years.

1. Except as provided in Paragraph 4 of this Subsection, applications received on or after July 1, 2020, for investments that meet the requirements of Subsection C of this Section and the requirements of 26 U.S.C. 1400Z-1, 1400Z-2, and applicable federal regulations shall be entitled to an enhanced credit in accordance with the provisions of this Subsection.

2. The amount of the credit granted by the department shall be 35 percent of the amount of the investment with the credit divided in equal portions for two years,

3. In addition to the credit cap provided for in Subsection A, the total amount of credits granted under this Subsection shall not exceed $3,600,000 per year for a total program cap of $7,200,000 per year. If the department does not grant the entire $3,600,000 in tax credits in any calendar year authorized pursuant to this Subsection, the amount of unused tax credits shall carry forward to subsequent calendar years and may be granted in any year without regard to the $3,600,000 annual cap provided for in this Subsection.

4. To the extent that federal laws and regulations relative to opportunity zones require that business revenues be derived from within the opportunity zone, otherwise eligible business shall be exempt from the requirement that 50 percent or more of sales shall come from out of state as specified in Subsection A.

H. No credits shall be granted or reserved under this program for reservation applications received by the department on or after July 1, 2025.

I. The department has the authority to change the administration of the Angel Investor Tax Credit Program when it is deemed necessary for the effective administration of the program. Notice of any change in administration will be done with 10-day prior notice published on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:3196 (December 2011), amended by the Department of Economic Development, Office of Business Development, LR 42:35 (January 2016), amended by Department of Economic Development, Office of the Secretary, LR 46:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49.972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCF 170 of the 2014 Regular Legislative Session.

Small Business Statement

The proposed Rule could cause a direct economic impact on small wealth creating Louisiana businesses located in Opportunity Zones designated for the state. Some additional applications could be received and approved over and above the normal level for the program resulting from applying for the opportunity zone enhanced 35 percent credit. Program credit costs could be greater than what would occur with only a simple program extension baseline. By providing a 35 percent enhanced credit feature for smaller wealth creating business owners in designated opportunity zones, there could be a considerable impact on receipts and/or income resulting from this rule change.

Public Comments

Interested persons may submit written comments to Robin Porter, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to the LaSalle Building, Office of the Secretary, Eleventh Floor, 617 North Third Street, Baton Rouge, LA 70802. Comments may also be sent by fax to (225) 342-9448, or by email to Robin.Porter@la.gov. All comments must be received no later than close of business day Monday, October 26,2020.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on Tuesday, October 27, 2020 at 4:00 p.m. in the LaBelle Conference Room at the LaSalle Building, 617 North 3rd Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Angel Investor Tax Credit Program

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

There is no impact on expenditures to the Department of Economic Development (LED) as a result of the proposed rules establishing guidelines for the Angel Investor Tax Credit Program. The program's purpose is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses in Louisiana and enlarging the quality jobs available in Louisiana. Administration of the program will be carried out utilizing existing staff and resources at LED. The program only affects state taxes, thus local governmental units are not implicated for implementation costs.

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

There will be reductions in revenues (increased costs) to the State General Fund (Direct) to the extent that investors take advantage of the tax credit pursuant to Act 22 of 2020 IES. The Angel Investor tax credit shall be granted at 25% of the amount of the investment taken over two years and is capped at $3.6 M per calendar year, for applications received by July 1, 2025. There is an additional tax credit for those businesses located in designated Opportunity Zones that provides for an enhanced credit of 35%.

Based on LED historical data from FY 14 – FY 19 (excluding abnormally low FY 16 claims), the current program costs an average $1.6 M - $2 M annually, with LED not fully awarding the credit cap under the current program. The extension of the program through 2025 will add increasing costs each year relative to the baseline expectation of annually declining costs sometime after FY 23. Based on the program's 24-month delay between credit certification and ability of taxpayers to utilize the credits, the earliest year of potential

impact is FY 25, with costs rising each year. Shortening the time frame within which the program credits can be claimed from three years to two years effectively increases costs to the program by approximately $500,000 annually. The additional cost increases due to the additional tax credits for businesses located in Opportunity Zones is speculative, but may be realized as early as FY 23.

There will be a benefit to state and local governmental units to the extent that an expansion of an existing business and/or new business is established in their municipality and/or parish. The state and local governmental units will benefit from new job creation and the increase in tax revenue as a result of those new jobs. The extent of the impact will be determined by amount of the investment.

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

The modifications to the Angel Investor Tax Credit program could cause a direct economic impact on small wealth creating Louisiana businesses located in Opportunity Zones designated for the state. Some additional applications could be received and approved over and above the normal level for the program resulting from applying for the opportunity zone enhanced 35% credit. Program credit costs could be greater than what would occur with only a simple program extension baseline.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The modifications to the Angel Investor Tax Credit program may impact competition and employment in that the amount of the tax credit has been lowered across the board. However, small business companies who are able to transfer their tax credits under the proposed rules do receive a benefit that was not available previously.

Anne G. Villa	Gregory V. Alrecht
Undersecretary	Chief Economist
2009#028	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools—Reopening of Schools for the 2020-2021 School Year
(LAC 28:CXXXIX.103, 4101, 4103 and 4105)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXXXIX (Bulletin 126). Proposed amendments align current policy with Act 9 of the 2020 First Extraordinary Session, which requires the State Board of Elementary and Secondary Education (BESE) to adopt, no later than July 15, 2020, emergency rules informed by the Centers for Disease Control and Prevention (CDC) guidelines to provide minimum standards, policies, medical exceptions, and regulations to govern the reopening of schools for the 2020-2021 school year.

Title 28
EDUCATION
Part CXXXIX. Bulletin 126—Charter Schools
Chapter 1. General Provisions
§103. Definitions

A. - A.2. …

* * *

Face Covering—a piece of material used to cover both the nose and mouth for the purpose of forming a barrier to droplets or airborne particles that are coughed, sneezed, or exhaled when talking. Face coverings are meant to protect both the wearer of the face covering and surrounding individuals.

* * *

High-Touch Surface—surfaces that are touched frequently, including but not limited to door handles, bathroom fixtures, drinking fountains, railings, desks, and other surfaces in school facilities or on school buses.

* * *

LDH—the Louisiana Department of Health.

* * *

Static Group—a group whose composition of students and adults does not change.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:439.1, 17:3391, 17:3981, and 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), LR 38:37 (January 2012), LR 38:750 (March 2012), repromulgated LR 38:1392 (June 2012), amended LR 38:1583 (July 2012), LR 39:3062 (November 2013), LR 40:1321 (July 2014), LR 42:1018 (July 2016), LR 43:2476 (December 2017), LR 46:

Chapter 41. Reopening School Facilities for the 2020-2021 School Year
§4101. Purpose and Background

A. This Chapter provides minimum health and safety standards regarding the reopening of school facilities for the 2020-2021 school year in response to the coronavirus disease (COVID-19) pandemic in order to ensure that students, faculty, staff, and others on school property are protected to the maximum extent possible and practical.

B. The requirements contained within this Chapter were developed by the LDE in coordination with the LDH using guidance provided by the Centers for Disease Control (CDC) regarding school settings, defined as a setting in which educational services are provided to children. As research and information about COVID-19 is updated or if the LDH or CDC revise guidance regarding school settings, the LDE will review the standards contained within this Chapter and, as appropriate and necessary, propose revisions of this Chapter to BESE.

C. While the requirements outlined in this Chapter are designed to mitigate the spread of COVID-19 and to create a safe and healthy environment for students, faculty, staff, and others on school property, no requirement or plan guarantees that individuals will not contract COVID-19.

D. The governor establishes the statewide phase(s) of reopening (phase 1, phase 2, or phase 3). If the local governing authority of a parish or other municipality has established a more restrictive phase of reopening, the LEA located within that parish or municipality must conform to the more restrictive requirements.

E. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

F. For the purposes of this Chapter, the following definition will apply.

Physical Distance—the act of an individual maintaining a space of 6 feet or more from another individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

§4103. Minimum Requirements for Reopening and Operating School Facilities

A. Group Sizes

1. The maximum group size that may convene indoors in a single room, irrespective of room size, or outdoors at any given time are as follows:

a. phase 1—10 individuals;

b. phase 2—25 individuals; and

c. phase 3—50 individuals.

2. Group Composition

a. Younger students who are unable to wear face coverings or maintain a physical distance from other students or adults should be assigned static groups. This must include, at a minimum, students in grades 2 or lower. The static group composition should be maintained for as long as possible over the course of the 2020-2021 school year.

b. The composition of a group may change if students are able to maintain a physical distance of at least six feet from other students and adults in a classroom or indoor setting, to the greatest extent possible.

c. Students with disabilities must continue to receive special education and related services in the least restrictive environment. School systems must factor in any additional service providers who may need to enter the classroom, students who receive services outside the classroom (e.g. resource, APE), and/or students who receive services through alternate instructional methods.

B. Physical Standards for the use of School Facilities

1. If a group convenes indoors, it must convene in a room enclosed by a wall or partition. This includes large rooms, such as a gymnasium or auditorium, which may include more than one group if each group is separated by a wall or partition.

2. If groups convene outdoors, a physical barrier is not required, but each group must remain separated.

3. To the greatest extent possible, schools must limit crowding at entry and exit points and maintain maximum group sizes and physical distance recommendations.

4. If a room is used by more than one group in a single day, high-touch surfaces contained in that room must be cleaned before and after use by each group.

C. Monitoring Students and Adults for Symptoms of COVID-19

1. Each school must establish an area used to isolate anyone showing signs of being sick. The isolation area must be cleaned after it is occupied by any sick student or adult.

2. Upon arriving at the school facility, each adult and student must be assessed for symptoms of COVID-19, as defined by the CDC. This includes an initial temperature check.

D. Environmental Cleaning and Personal Hygiene

1. High-touch surfaces must be cleaned multiple times per day, including bathrooms.

2. Students must wash or sanitize hands upon arrival at the school, at least every two hours, before and after eating, before and after using outdoor play equipment, and before exiting the school facility.

3. While inside the school facility, all adults and students in grades 3 through 12 must wear a face covering to the greatest extent possible and practical within the local community context.

4. While inside the school facility, students in grades prekindergarten through 2 may wear a face covering.

5. While inside the school facility, children under two years old and individuals with breathing difficulties should not wear a face covering.

E. Hygienic Supplies

1. School employees must be provided adequate access to hygienic supplies, including soap, hand sanitizer with at least 60 percent alcohol, disinfectant wipes or spray, paper towels, and tissues. Face coverings should also be provided when needed.

2. The quantity of hygienic supplies must be appropriately provided to the school employee, according to the role and the number and age of students or adults served by that employee.

F. Transportation

1. School buses used to transport students must not exceed the following maximum capacity requirements:

a. phase 1—25 percent, including adults, of the school bus manufacturer capacity;

b. phase 2—50 percent, including adults, of the school bus manufacturer capacity; and

c. phase 3—75 percent, including adults, of the school bus manufacturer capacity.

2. Passengers on a school bus must be spaced to the greatest extent possible as follows:

a. phase 1—passengers must ride one per seat. Every other seat must remain empty. Members of the same household may sit in the same seat or adjacent seats; and

b. phase 2 and 3—passengers must be dispersed throughout the bus to the greatest extent possible.

G. Student Programming Determinations

1. Student placement determinations in a distance or in-person education program should be made in consultation with the parent or custodian.

2. Student placement determinations should take into consideration a student's unique academic, social, emotional, familial, and medical needs of a student, as identified by the student's parent or custodian.

H. Essential Visitors to School Facilities

1. Essential visitors are individuals who must enter schools or early learning centers in order to conduct visits in accordance with Louisiana law or policy. Essential visitors include, but are not limited to, individuals who:

a. conduct *CLASS*® observations;

b. observe teacher candidates as part of the teacher preparation quality rating system; or

c. provide essential supports and services including, but not limited to, early intervention services, special education services, or mental health consultation.

2. Essential visitors must comply with the minimum health and safety standards in this Subchapter.

I. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

§4105. Local Education Agency (LEA) Reopening Policies and Plans

A. Prior to the beginning of the 2020-2021 school year, each local school board must adopt policies in accordance with the standards outlined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the providers to provide the same level of service; or
3. the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2020, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 126—Charter Schools
Reopening of Schools for the 2020-2021 School Year

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

The proposed revisions will result a significant increase in expenditures for charter schools, both those considered local education agencies (LEAs) and those that operate within a school district. Some charter schools may experience disproportionate impacts due to the size of available fund balances and their reliance on city and parish school systems for sales or ad valorem tax revenues.

Costs are associated with the following instructional modifications, purchases, and services, and are contingent upon the public health constraints imposed by each phase of the reopening process as established through the Governor's executive order: the purchase and installation of partitions and costs associated with other facility modifications to implement group size restrictions in classrooms and other school facilities, provide for isolation areas, and address entry and exit points; additional staffing to accommodate static groups, maintain special education services, increased custodial services, as well as the potential need for long-term coverage for substitute teachers; purchase of thermometers and personal protective equipment (PPE) to monitor students and staff for symptoms of COVID-19; purchase of cleaning and disinfecting supplies for daily cleaning of high-touch surfaces and other school spaces; and the purchase of hygienic supplies, including soap, hand

sanitizer, disinfectant wipes or spray, paper towels, tissues, and face coverings. Charter schools may incur significant costs associated with transportation due to limits on school bus capacity, including additional fuel for new routes and additional school buses and drivers for expanded fleet size; costs will vary by geography, student characteristics, and whether school buses are district-owned or contracted. Student programming determinations (distance or in-person instruction) may involve costs to the extent additional technology purchases, expanded server capacity, professional development, and assistance to families without internet access are required.

The amount of these expenditures is indeterminable at this time and will vary by charter school. Additional unforeseen costs may arise due to the unpredictability of operating during a pandemic, such as school staffing and attendance levels, consumption rate of hygienic supplies, and other factors. Further, it is unclear how schools will interpret provisions in the proposed rules that permit implementation "to the greatest extent possible"; this will likely vary by charter school.

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

Local charter schools will receive additional federal revenues to assist in offsetting the increased costs. In April 2020, the Department of Education (LDE) received nearly $287 million in federal relief funding through the Coronavirus Aid, Relief and Economic Security (CARES) Act. The Department has notified school systems of their Elementary and Secondary School Emergency Relief (ESSER) Fund allocations totaling $258 million. Because allocations to LEAs are based on their proportional share of Title I, Part A subgrants, allocations for charter schools with fewer economically disadvantaged students may not be sufficient to offset costs. Charter schools must apply to the LDE for funds and distributions must be made by the LDE within one year of receipt. Schools must obligate funds by September 30, 2022. Per U.S. Department of Education guidance, charter schools that are considered LEAs (types 2, 3B, and 5) are eligible for an ESSER subgrant as any other LEA. A charter school that is not a LEA (types 1, 3, and 4) may not receive a formula subgrant, but it will receive support through the LEA of which it is a part.

In addition to receiving a formula allocation of ESSER funds, LEAs were eligible to apply for $25 million in ESSER incentive grants to support priorities enumerated in the LDE Strong Start 2020 guidelines, including curricular materials and professional development for continuous learning, postsecondary planning for high school students and recent graduates, supports for students with disabilities, and assistance with developing professional learning and adaptive staffing plans. In June 2020, BESE approved ESSER incentive grant allocations to districts. CARES Act funds included the Governor's Emergency Education Relief (GEER) Fund for Governors to support LEAs to continue to provide educational services and on-going functionality. The LDE allocated $32.3 M to LEAs based on a needs assessment for devices and internet connectivity.

In July, the LDE was awarded $17 million through the Rethink K-12 Education Models Grant to provide over 75,000 students access to microgrants for remote learning resources, including at least 12,000 students who will receive devices or hotspots through the program. Finally, the LDE is collaborating with the Governor's Office of Homeland Security and Emergency Management (GOHSEP) to assist districts with the purchase and distribution of personal protective equipment, including reusable and disposable face masks for faculty, staff, students, and visitors, and at least three thermometers per school.

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

In the event a charter school chooses to provide virtual education or a hybrid of virtual education and in-person education, families may experience reduced earnings through lost wages as well as increased childcare expenses on those days in which virtual education is offered. According to an April 2020 distance learning survey conducted by the LDE, approximately 34% of students do not have home internet access and 28% do not have access to a school-issued personal tablet or computer; families may incur costs associated with technology purchases and internet access. Additionally, families may experience costs to the extent they need to secure alternative means of school transportation due to limitations on school bus capacity. The amount of these costs will vary by family and are indeterminable at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be increased demand for substitute teachers, school bus drivers and custodial services as a result of the proposed rules on group sizes, hygienic and cleaning requirements, and transportation capacity.

Beth Scioneaux	Christopher A. Keaton
Deputy Superintendent	Legislative Fiscal Officer
2009#034	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Diploma Integrity
Community Service Diploma Endorsement
(LAC 28:CXV.2317)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXV (Bulletin 741). Proposed revisions repeal the grade-level community service hour requirements and instead require that a student pursuing a Community Service Diploma Endorsement earn 80 hours of approved community service hours prior to graduation, as appropriate and reasonable

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 23. Curriculum and Instruction
Subchapter A. Standards and Curricula
§2317. High Schools

A. - H. …

I. Community Service Diploma Endorsement

1. LEAs may allow students to earn a community service diploma endorsement.

2. Entering freshmen in 2013-2014 and beyond may earn the community service diploma endorsement by completing, at a minimum, 80 hours of documented community service prior to graduation.

3. …

4. Students transferring into a participating LEA after the ninth grade or students graduating early may receive an

endorsement provided a total of 80 community service hours are completed prior to graduation.

J. - K.2.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:154, 17:264, 17:1944, 17:1945, and 17:4073.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 36:1485 (July 2010), LR 37:1137 (April 2011), LR 38:754 (March 2012), LR 39:1038 (April 2013), LR 39:2216 (August 2013), LR 40:1328 (July 2014), repromulgated LR 40:1528 (August 2014), amended LR 40:2530 (December 2014), LR 45:37 (January 2019), LR 45:227 (February 2019), LR 46:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the providers to provide the same level of service; or
3. the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2020, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Diploma Integrity Community Service Diploma Endorsement

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

There is no impact to the Department of Education (LDE) or local school districts as a result of the proposed revisions which remove the minimum number of hours a student must complete per year in order to earn a Community Service Diploma Endorsement. The changes may require school counselors to revise documentation procedures, however this is not anticipated to have a material impact.

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

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

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

To the extent this revision results in more high school students pursuing the Community Service Diploma Endorsement, non-governmental organizations may benefit from an increase in the number of volunteers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux
Deputy Superintendent
2009#035

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Reopening of Schools for the 2020-2021 School Year (LAC 28:CXV.401, 403, 405 and 3703)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXV (Bulletin 741). Proposed amendments align current policy with Act 9 of the 2020 First Extraordinary Session, which requires the State Board of Elementary and Secondary Education (BESE) to adopt, no later than July 15, 2020, emergency rules informed by the Centers for Disease Control and Prevention (CDC) guidelines to provide minimum standards, policies, medical exceptions, and regulations to govern the reopening of schools for the 2020-2021 school year.

Title 28
EDUCATION
Part CXV. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 4. Reopening School Facilities for the 2020-2021 School Year

§401. Purpose and Background

A. This Chapter provides minimum health and safety standards regarding the reopening of school facilities for the 2020-2021 school year in response to the coronavirus disease (COVID-19) pandemic in order to ensure that students, faculty, staff, and others on school property are protected to the maximum extent possible and practical.

B. The requirements contained within this Chapter were developed by the LDE in coordination with the LDH using guidance provided by the Centers for Disease Control (CDC) regarding school settings, defined as a setting in which educational services are provided to children. As research and information about COVID-19 is updated or if the LDH or CDC revise guidance regarding school settings, LDE will review the standards contained within this Chapter and, as appropriate and necessary, propose revisions of this Chapter to BESE.

C. While the requirements outlined in this Chapter are designed to mitigate the spread of COVID-19 and to create a safe and healthy environment for students, faculty, staff, and others on school property, no requirement or plan guarantees that individuals will not contract COVID-19.

D. The governor establishes the statewide phase(s) of reopening (phase 1, phase 2, or phase 3). If the local governing authority of a parish or other municipality has established a more restrictive phase of reopening, the LEA located within that parish or municipality must conform to the more restrictive requirements.

E. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

F. For the purposes of this Chapter, the following definition will apply.

Physical Distance—the act of an individual maintaining a space of 6 feet or more from another individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

§403. Minimum Requirements for Reopening and Operating School Facilities

A. Group Sizes

1. The maximum group size that may convene indoors in a single room, irrespective of room size, or outdoors at any given time are as follows:

a. phase 1—10 individuals;

b. phase 2—25 individuals; and

c. phase 3—50 individuals.

2. Group Composition

a. Younger students who are unable to wear face coverings or maintain a physical distance from other students or adults should be assigned static groups. This must include, at a minimum, students in Grade 2 or lower. The static group composition should be maintained for as long as possible over the course of the 2020-2021 school year.

b. The composition of a group may change if students are able to maintain a physical distance of at least six feet from other students and adults in a classroom or indoor setting, to the greatest extent possible.

c. Students with disabilities must continue to receive special education and related services in the least restrictive environment. School systems must factor in any additional service providers who may need to enter the classroom, students who receive services outside the classroom (e.g. resource, APE), and/or students who receive services through alternate instructional methods.

B. Physical Standards for the use of School Facilities

1. If a group convenes indoors, it must convene in a room enclosed by a wall or partition. This includes large rooms, such as a gymnasium or auditorium, which may include more than one group if each group is separated by a wall or partition.

2. If groups convene outdoors, a physical barrier is not required, but each group must remain separated.

3. To the greatest extent possible, schools must limit crowding at entry and exit points and maintain maximum group sizes and physical distance recommendations.

4. If a room is used by more than one group in a single day, high-touch surfaces contained in that room must be cleaned before and after use by each group.

C. Monitoring Students and Adults for Symptoms of COVID-19

1. Each school must establish an area used to isolate anyone showing signs of being sick. The isolation area must be cleaned after it is occupied by any sick student or adult.

2. Upon arriving at the school facility, each adult and student must be assessed for symptoms of COVID-19, as defined by the CDC. This includes an initial temperature check.

D. Environmental Cleaning and Personal Hygiene

1. High-touch surfaces must be cleaned multiple times per day, including bathrooms.

2. Students must wash or sanitize hands upon arrival at the school, at least every two hours, before and after eating, before and after using outdoor play equipment, and before exiting the school facility.

3. While inside the school facility, all adults and students in grades 3 through 12 must wear a face covering to the greatest extent possible and practical within the local community context.

4. While inside the school facility, students in grades prekindergarten through 2 may wear a face covering.

5. While inside the school facility, children under two years old and individuals with breathing difficulties should not wear a face covering.

E. Hygienic Supplies

1. School employees must be provided adequate access to hygienic supplies, including soap, hand sanitizer with at least 60 percent alcohol, disinfectant wipes or spray, paper towels, and tissues. Face coverings should also be provided when needed.

2. The quantity of hygienic supplies must be appropriately provided to the school employee, according to the role and the number and age of students or adults served by that employee.

F. Transportation

1. School buses used to transport students must not exceed the following maximum capacity requirements:

a. phase 1—25 percent, including adults, of the school bus manufacturer capacity;

b. phase 2—50 percent, including adults, of the school bus manufacturer capacity; and

c. phase 3—75 percent, including adults, of the school bus manufacturer capacity.

2. Passengers on a school bus must be spaced to the greatest extent possible as follows:

a. phase 1—passengers must ride one per seat. Every other seat must remain empty. Members of the same household may sit in the same seat or adjacent seats; and

b. phase 2 and 3—passengers must be dispersed throughout the bus to the greatest extent possible.

G. Student Programming Determinations

1. Student placement determinations in a distance or in-person education program should be made in consultation with the parent or custodian.

2. Student placement determinations should take into consideration a student's unique academic, social, emotional, familial, and medical needs of a student, as identified by the student's parent or custodian.

H. Essential Visitors to School Facilities

1. Essential visitors are individuals who must enter schools or early learning centers in order to conduct visits in accordance with Louisiana law or policy. Essential visitors include, but are not limited to, individuals who:

a. conduct *CLASS*® observations;

b. observe teacher candidates as part of the teacher preparation quality rating system; or

c. provide essential supports and services including, but not limited to, early intervention services, special education services, or mental health consultation.

I. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

§405. Local Education Agency (LEA) Reopening Policies and Plans

A. Prior to the beginning of the 2020-2021 school year, each local school board must adopt policies in accordance with the standards outlined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

Chapter 37. Glossary

§3703. Definitions

* * *

Board or *BESE*—the state Board of Elementary and Secondary Education.

* * *

Department or *LDE*—the Louisiana Department of Education.

* * *

Face Covering—a piece of material used to cover both the nose and mouth for the purpose of forming a barrier to droplets or airborne particles that are coughed, sneezed, or exhaled when talking. Face coverings are meant to protect both the wearer of the face covering and surrounding individuals.

* * *

High-Touch Surface—surfaces that are touched frequently, including but not limited to door handles, bathroom fixtures, drinking fountains, railings, desks, and other surfaces in school facilities or on school buses.

* * *

LDH—the Louisiana Department of Health.

* * *

Static Group—a group whose composition of students and adults does not change.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1316 (June 2005), amended LR 39:2231 (August 2013), LR 46:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the providers to provide the same level of service; or
3. the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2020, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Reopening of Schools for the 2020-2021 School Year

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

The proposed revisions will result a significant increase in expenditures for local education agencies (LEAs). Some districts may experience disproportionate impacts due to the size of available fund balances and their reliance on sales or ad valorem tax revenues.

Costs are associated with the following instructional modifications, purchases, and services, and are contingent upon the public health constraints imposed by each phase of the reopening process as established through the Governor's executive order: the purchase and installation of partitions and costs associated with other facility modifications to implement group size restrictions in classrooms and other school facilities, provide for isolation areas, and address entry and exit points; additional staffing to accommodate static groups, maintain special education services, increased custodial services, as well as the potential need for long-term coverage for substitute teachers; purchase of thermometers and personal protective equipment (PPE) to monitor students and staff for symptoms of COVID-19; purchase of cleaning and disinfecting supplies for daily cleaning of high-touch surfaces and other school spaces; and the purchase of hygienic supplies, including soap, hand sanitizer, disinfectant wipes or spray, paper towels, tissues, and face coverings. School districts may incur significant costs associated with transportation due to limits on school bus capacity, including additional fuel for new routes and additional school buses and drivers for expanded fleet size; costs will vary by geography, student characteristics, and whether school buses are district-owned or contracted. Student programming determinations (distance or in-person instruction) may involve costs to the extent additional technology purchases, expanded server capacity, professional development, and assistance to families without internet access are required.

The amount of these expenditures is indeterminable at this time and will vary by district. Additional unforeseen costs may arise due to the unpredictability of operating during a pandemic, such as school staffing and attendance levels, consumption rate of hygienic supplies, and other factors. Further, it is unclear how schools will interpret provisions in the proposed rules that permit implementation "to the greatest extent possible"; this will likely vary by district.

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

Local school districts will receive additional federal revenues to assist in offsetting the increased costs. In April 2020, the Department of Education (LDE) received nearly $287 million in federal relief funding through the Coronavirus Aid, Relief and Economic Security (CARES) Act. The Department has notified school systems of their Elementary and Secondary School Emergency Relief (ESSER) Fund allocations totaling $258 million. Because allocations to LEAs are based on their proportional share of Title I, Part A subgrants, allocations for districts with fewer economically disadvantaged students may not be sufficient to offset costs. LEAs must apply to the LDE for funds and distributions must be made by the LDE within one year of receipt. LEAs must obligate funds by September 30, 2022.

In addition to receiving a formula allocation of ESSER funds, LEAs were eligible to apply for $25 million in ESSER incentive grants to support priorities enumerated in the LDE Strong Start 2020 guidelines, including curricular materials and professional development for continuous learning, postsecondary planning for high school students and recent graduates, supports for students with disabilities, and assistance with developing professional learning and adaptive staffing plans. In June 2020, BESE approved ESSER incentive grant allocations to districts. CARES Act funds also included the Governor's Emergency Education Relief (GEER) Fund for Governors to support LEAs to continue to provide educational services and on-going functionality. The LDE allocated $32.3 M to LEAs based on a needs assessment for devices and internet connectivity.

In July, the LDE was awarded $17 million through the Rethink K-12 Education Models Grant to provide over 75,000 students access to microgrants for remote learning resources, including at least 12,000 students who will receive devices or hotspots through the program. Finally, the LDE is collaborating with the Governor's Office of Homeland Security and Emergency Management (GOHSEP) to assist districts with the purchase and distribution of personal protective equipment, including reusable and disposable face masks for faculty, staff, students, and visitors, and at least three thermometers per school.

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

In the event a local school district chooses to provide virtual education or a hybrid of virtual education and in-person education, families may experience reduced earnings through lost wages as well as increased childcare expenses on those days in which virtual education is offered. According to an April 2020 distance learning survey conducted by the LDE, approximately 34% of students do not have home internet access and 28% do not have access to a school-issued personal tablet or computer; families may incur costs associated with technology purchases and internet access. Additionally, families may experience costs to the extent they need to secure alternative means of school transportation due to limitations on school bus capacity. The amount of these costs will vary by family and are indeterminable at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be increased demand for substitute teachers, school bus drivers and custodial services as a result of the proposed rules on group sizes, hygienic and cleaning requirements, and transportation capacity.

Beth Scioneaux	Christopher A. Keaton
Deputy Superintendent	Legislative Fiscal Officer
2009#036	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators
Reopening of Schools for the 2020-2021 School Year
(LAC 28:LXXIX.1101, 1103, 1105, 1107, 1109 and 3303)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 17:6(A)(10), the Board of Elementary and Secondary Education proposes to amend LAC 28:CXV (Bulletin 741) and LAC 28: CLXIII (Bulletin 138). Proposed amendments align current policy with Act 9 of the 2020 First Extraordinary Session, which requires the State Board of Elementary and Secondary Education (BESE) to adopt, no later than July 15, 2020, emergency rules informed by the Centers for Disease Control and Prevention (CDC) guidelines to provide minimum standards, policies, medical exceptions, and regulations to govern the reopening of schools for the 2020-2021 school year.

Title 28
EDUCATION
Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators
Chapter 11. Health
Subchapter A. General Provisions
§1101. Immunization

A. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, 44:411, 17:170(D), and 17:170(A)(1).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2348 (November 2003), amended LR 31:3078 (December 2005), LR 35:1232 (July 2009), LR 35:2348 (November 2009), LR 39:1443 (June 2013), repromulgated LR 46:

§1103. Diabetes Management and Treatment

NOTE: This Section was developed in coordination with the Louisiana State Board of Nursing (LSBN). Any waivers, deletions, additions, amendments, or alterations to this policy shall be approved by both BESE and LSBN.

A. - A.4.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, 17:411, 17:170(D), 17:170(A)(1), and 17:436.3.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:480 (March 2013), repromulgated LR 46:

Subchapter B. Reopening School Facilities for the 2020-2021 School Year
§1105. Purpose and Background

A. This Subchapter provides minimum health and safety standards regarding the reopening of school facilities for the 2020-2021 school year in response to the coronavirus disease (COVID-19) pandemic and to ensure that students, faculty, staff, and others on school property are protected to the maximum extent possible and practical.

B. The requirements contained within this Subchapter were developed by the LDE in coordination with the LDH using guidance provided by the Centers for Disease Control (CDC) regarding school settings, defined as a setting in which educational services are provided to children. As research and information about COVID-19 is updated, or if the LDH or CDC revise guidance regarding school settings, the LDE–will review the standards contained within this Subchapter and, as appropriate and necessary, propose revisions of this Subchapter to BESE.

C. While the requirements outlined in this Subchapter are designed to mitigate the spread of COVID-19 and to create a safe and healthy environment for students, faculty, staff, and others on school property, no requirement or plan guarantees that individuals will not contract COVID-19.

D. The governor establishes the statewide phase(s) of reopening (phase 1, phase 2, or phase 3). If the local governing authority of a parish or other municipality has

established a more restrictive phase of reopening, the LEA located within that parish or municipality must conform to the more restrictive requirements.

E. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

F. For the purposes of this Subchapter, the following definition will apply.

Physical Distance—the act of an individual maintaining a space of six feet or more from another individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

§1107. Minimum Requirements for Reopening and Operating School Facilities

A. Group Sizes

1. The maximum group size that may convene indoors in a single room, irrespective of room size, or outdoors at any given time are as follows:

a. phase 1—10 individuals;

b. phase 2—25 individuals; and

c. phase 3—50 individuals.

2. Group Composition

a. Younger students who are unable to wear face coverings or maintain a physical distance from other students or adults should be assigned static groups. This should include, at a minimum, students in grades 2 or lower. The static group composition should be maintained for as long as possible over the course of the 2020-2021 school year.

b. The composition of a group may change if students are able to maintain a physical distance of at least six feet from other students and adults in a classroom or indoor setting, to the greatest extent possible.

c. Students with disabilities must continue to receive special education and related services in the least restrictive environment. School systems must factor in any additional service providers who may need to enter the classroom, students who receive services outside the classroom (e.g. resource, APE), and/or students who receive services through alternate instructional methods.

B. Physical Standards for the use of School Facilities

1. If a group convenes indoors, it must convene in a room enclosed by a wall or partition. This includes large rooms, such as a gymnasium or auditorium, which may include more than one group if each group is separated by a wall or partition.

2. If groups convene outdoors, a physical barrier is not required, but each group must remain separated.

3. To the greatest extent possible, schools must limit crowding at entry and exit points and maintain maximum group sizes and physical distance recommendations.

4. If a room is used by more than one group in a single day, high-touch surfaces contained in that room must be cleaned before and after use by each group.

C. Monitoring Students and Adults for Symptoms of COVID-19

1. Each school must establish an area used to isolate anyone showing signs of being sick. The isolation area must be cleaned after it is occupied by any sick student or adult.

2. Upon arriving at the school facility, each adult and student must be assessed for symptoms of COVID-19, as defined by the CDC. This includes an initial temperature check.

D. Environmental Cleaning and Personal Hygiene

1. High-touch surfaces must be cleaned multiple times per day, including bathrooms.

2. Students must wash or sanitize hands upon arrival at the school, at least every two hours, before and after eating, before and after using outdoor play equipment, and before exiting the school facility.

3. While inside the school facility, all adults and students in grades 3 through 12 must wear a face covering to the greatest extent possible and practical within the local community context.

4. While inside the school facility, students in grades prekindergarten through 2 may wear a face covering.

5. While inside the school facility, children under two years old and individuals with breathing difficulties should not wear a face covering.

E. Hygienic Supplies

1. School employees must be provided adequate access to hygienic supplies, including soap, hand sanitizer with at least 60 percent alcohol, disinfectant wipes or spray, paper towels, and tissues. Face coverings should also be provided when needed.

2. The quantity of hygienic supplies must be appropriately provided to the school employee, according to the role and the number and age of students or adults served by that employee.

F. Transportation

1. School buses used to transport students must not exceed the following maximum capacity requirements:

a. phase 1—25 percent, including adults, of the school bus manufacturer capacity;

b. phase 2—50 percent, including adults, of the school bus manufacturer capacity; and

c. phase 3—75 percent, including adults, of the school bus manufacturer capacity.

2. Passengers on a school bus must be spaced to the greatest extent possible as follows:

a. phase 1—passengers must ride one per seat. Every other seat must remain empty. Members of the same household may sit in the same seat or adjacent seats; and

b. phase 2 and 3—passengers must be dispersed throughout the bus to the greatest extent possible.

G. Student Programming Determinations

1. Student placement determinations in a distance or in-person education program should be made in consultation with the parent or custodian.

2. Student placement determinations should take into consideration a student's unique academic, social, emotional, familial, and medical needs of a student, as identified by the student's parent or custodian.

H. Essential Visitors to School Facilities

1. Essential visitors are individuals who must enter schools or early learning centers in order to conduct visits in accordance with Louisiana law or policy. Essential visitors include, but are not limited to, individuals who:

a. conduct *CLASS*® observations;

b. observe teacher candidates as part of the teacher preparation quality rating system; or

c. provide essential supports and services including, but not limited to, early intervention services, special education services, or mental health consultation.

2. Essential visitors must comply with the minimum health and safety standards in this Subchapter.

I. Medical or disability impact exceptions to any standard in this Chapter should be addressed on an individual basis by the LEA in accordance with local policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1 and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

§1109. Nonpublic School Board or Governing Authority Reopening Policies and Plans

A. Prior to the beginning of the 2020-2021 school year, each nonpublic school board or governing authority must adopt policies in accordance with the standards outlined in this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 46:

Chapter 33. Glossary

§3303. Definitions

* * *

Department or *LDE*—the Louisiana Department of Education.

* * *

Face Covering—a piece of material used to cover both the nose and mouth for the purpose of forming a barrier to droplets or airborne particles that are coughed, sneezed, or exhaled when talking. Face coverings are meant to protect both the wearer of the face covering and surrounding individuals.

* * *

High-Touch Surface—surfaces that are touched frequently, including but not limited to door handles, bathroom fixtures, drinking fountains, railings, desks, and other surfaces in school facilities or on school buses.

* * *

LDH—the Louisiana Department of Health.

* * *

Static Group—a group whose composition of students and adults does not change.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:7, 17:439.1, and 17:3391.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary, Education, LR 34:230 (February 2008), amended LR 36:2848 (December 2010), LR 38:1405 (June 2012), LR 39:1457 (June 2013), LR 41:1486 (August 2015), LR 46:

Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on rules proposed for adoption, repeal, or amendment. All Family Impact Statements will be kept on file in the state board office which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on rules proposed for adoption, amendment, or repeal. All Poverty Impact Statements will be in writing and kept on file in the state agency which has adopted, amended, or repealed rules in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial authority? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the cost to the providers to provide the same level of service; or

3. the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m. (noon), October 10, 2020, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may be

hand-delivered to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date-stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators Reopening of Schools for the 2020-2021 School Year

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

There will be increased costs for local public school districts to purchase supplies and services on behalf of nonpublic school governing authorities. In April 2020, the Department of Education (LDE) received nearly $287 million in federal relief funding through the CARES Act. The Department has notified public school systems of their Elementary and Secondary School Emergency Relief (ESSER) Fund allocations totaling $258 million. These allocations are based on their proportional share of Title I, Part A subgrants. An LEA that receives funds under the CARES Act programs must provide equitable services to students and teachers in a non-public school in the same manner as provided under section 1117 of the Elementary and Secondary Education Act (ESEA) of 1965, as determined in consultation with representatives of non-public schools. LEAs maintain control of funds for services and assistance provided to nonpublic schools. Although the use of funds will vary, potential uses are for technology purchases and other supplies and services relating to reopening procedures or distance learning.

Local school districts will incur administrative costs associated with consulting with nonpublic school governing authorities, determining the proportional share of CARES Act funding, and facilitating the purchase of supplies and services on behalf of nonpublic schools, however these costs are expected to be negligible.

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

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

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

The proposed revisions will result a significant increase in expenditures for nonpublic schools. Some schools may experience disproportionate impacts due available fund balances and their reliance on tuition and other revenues. Federal revenues are available to nonpublic schools for such expenditures through the Coronavirus Aid, Relief and Economic Security (CARES) Act, however amounts will vary by parish.

Costs are associated with the following instructional modifications, purchases, and services, and are contingent upon the public health constraints imposed by each phase of the reopening process as established through the Governor's executive order: the purchase and installation of partitions and costs associated with other facility modifications to implement group size restrictions in classrooms and other school facilities, provide for isolation areas, and address entry and exit points; additional staffing to accommodate static groups, maintain special education services, increased custodial services, as well as the potential need for long-term coverage for substitute teachers; purchase of thermometers and personal protective equipment (PPE) to monitor students and staff for symptoms of COVID-19; purchase of cleaning and disinfecting supplies for daily cleaning of high-touch surfaces and other school spaces; and the purchase of hygienic supplies, including soap, hand sanitizer, disinfectant wipes or spray, paper towels, tissues, and face coverings. Nonpublic schools may incur significant costs associated with transportation due to limits on school bus capacity, including additional fuel for new routes and additional school buses and drivers for expanded fleet size; costs will vary by geography, student characteristics, and whether school buses are district-owned or contracted. Student programming determinations (distance or in-person instruction) may involve costs to the extent additional technology purchases, expanded server capacity, professional development, and assistance to families without internet access are required.

The amount of these expenditures is indeterminable at this time and will vary by nonpublic school. Additional unforeseen costs may arise due to the unpredictability of operating during a pandemic, such as school staffing and attendance levels, consumption rate of hygienic supplies, and other factors. Further, it is unclear how schools will interpret provisions in the proposed rules that permit implementation "to the greatest extent possible"; this will likely vary by school.

There will be an increase in revenues through the CARES Act. Nonpublic schools are eligible to receive a portion of federal revenues allocated to local education agencies (LEAs) through the CARES Act. According to U.S. Department of Education guidance, nonpublic schools eligible for CARES Act funding include those which are accredited, licensed, or otherwise operating in accordance with state law, and in existence prior to March 13, 2020. Actual amounts will vary by parish according to each school district's allocations and the percentage of children enrolled in nonpublic schools. LEAs determine the overall number of children who are enrolled in both public and nonpublic schools in the LEA that wish to participate in CARES Act programs. Using the proportion of students who are enrolled in participating nonpublic schools, the LEA determines the amount of funds available for equitable services based on that proportional share of the LEA's total allocation.

Finally, in the event a nonpublic school governing authority chooses to provide virtual education or a hybrid of virtual education and in-person education, families may experience increased childcare costs on those days in which virtual education is offered. The amount of these costs will vary by family and are indeterminable at this time. It is unknown how many nonpublic school students lack home internet access or do not have access to a school-issued personal tablet or computer; families may incur costs associated with technology purchases and internet access. Additionally, families may experience costs to the extent they need to secure alternative means of school transportation due to limitations on school bus capacity. The amount of these costs will vary by family and are indeterminable at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be increased demand for substitute teachers, school bus drivers and custodial services as a result of the proposed rules on group sizes, hygienic and cleaning requirements, and transportation capacity.

Beth Scioneaux
Deputy Superintendent
2009#037

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Regents
Office of Student Financial Assistance

Scholarship/Grant Programs—2020 Regular Session of the Louisiana Legislature and TOPS 5.0 Grading Scale: AP Psychology (LAC 28:IV.509, 703, 705, 803, and 805)

The Louisiana Board of Regents announces its intention to amend the Scholarship/Grant program rules [R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1.1-3042.8, R.S. 17:5001 et seq., and R.S. 56:797.D(2)].

This rulemaking implements Act 225, Act 245, and (HB870) of the 2020 Regular Session of the Louisiana Legislature and adds AP Psychology as a course that may be graded on a 5.0 scale for high school graduates of 2018 and later. (SG21192NI)

The Rule language of this Notice of Intent may be viewed in the Emergency Rule portion of this Louisiana Register edition.

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed Rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments on the proposed changes (SG21192NI) until 4:30 p.m., October 14, 2020, by email to LOSFA.Comments@la.gov or to Sujuan Williams Boutté, Ed. D., Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

Robyn Rhea Lively
Senior Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
2020 Regular Session of the Louisiana Legislature and TOPS 5.0 Grading Scale: AP Psychology

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

There will be an increase in Taylor Opportunity Program for Students (TOPS) expenditures due to the implementation of 2020 RS legislation and administrative measures including: eligibility requirement measures taken to mitigate the COVID-19 state of emergency impact on students (Acts 245 and 346); implementation of TOPS program changes for certain military veterans, (Act 225); and the addition of AP Psychology as a course graded on a 5.0 scale in the calculation of the TOPS Core Curriculum GPA that are included in this rulemaking. The total magnitude of the increase is indeterminable given the continuing impact of the COVID-19 health emergency and the difficulty in estimating the additional number of students that would receive TOPS payments or higher TOPS awards due to the COVID-19 waivers, new military veteran program, delay in the Performance/Honors Award GPA change, or AP Psychology course addition. Although difficult to estimate the impact of these changes, it is estimated that the legislature has appropriated sufficient funding in the current fiscal year to cover the possible increase.

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

There is no impact on state or local governmental revenues.

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

The proposed rulemaking will benefit students and military veterans by providing them TOPS funding to enable them to pursue postsecondary education and thus gain educational benefits and access to higher paying jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures other than promoting a better educated pool of workers.

Robyn Rhea Lively
Senior Attorney
2009#040

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Tuition Trust Authority
Office of Student Financial Assistance

START Saving Program
(LAC 28:VI.311)

The Louisiana Tuition Trust Authority announces its intention to amend its START Saving Program rules (R.S. 17:3091 et seq.).

This rulemaking implements Act 56 of the 2020 Regular Session of the Louisiana Legislature. (ST21191NI)

Title 28
EDUCATION
Part VI. Student Financial Assistance—Higher Education Savings
Chapter 3. Education Savings Account
§311. Termination, Refund, and Rollovers of an Education Savings Account

A. - E.4.c. …

5. For the 2020 calendar year only, and beginning on August 1, 2020, an account owner may request a refund in order to pay the tuition expenses related to the beneficiary's enrollment in kindergarten through twelfth grade as follows:

a. the amount requested to be refunded is less than or equal to the balance of the account;

b. the amount requested to be refunded does not exceed $10,000;

c. no earnings enhancements or interest thereon shall be included in such a refund.

6. Refunds made under §311.E.3 and 4 are currently exempt from additional federal taxes.

F. - H.4. …

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in LSA-R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in LSA-R.S. 49:973.

Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed Rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments on the proposed changes (SG21191NI) until 4:30 p.m., October 14, 2020, by email to LOSFA.Comments@la.gov or to Sujuan Williams Boutté, Ed. D., Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

Robyn Rhea Lively
Senior Attorney

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: START Saving Program

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

The proposed rule changes will not result in any costs or savings to state or local governmental units.

This proposed change places in the START Program rules the provisions enacted by Act 56 (SB 78) of the 2020 Regular Session of the Louisiana Legislature that added LSA-R.S. 17:30931(I) that authorizes account owners to withdraw funds from their START education savings account (funding that is the property of the account owners and not State General Fund) to pay tuition at an eligible elementary or secondary school. This authorization is limited to the 2020 calendar year and the withdrawal cannot exceed $10,000 per beneficiary/account. In addition, the disbursements to account owners shall not include any earnings enhancements or interest thereon that may have accrued to the START education savings account.

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

The proposed rule changes will have no effect on revenue collections of state or local governmental units.

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

There will be an economic benefit to START account owners as the proposed change will allow them to use account funds for tuition at elementary or secondary schools, which is otherwise prohibited by law. This benefit will only be incurred for the 2020 calendar year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not affect competition and employment.

Robyn Rhea Lively
Senior Attorney
2009#041

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Office of Indian Affairs

American Indian Scholarship (LAC 28:VIII.Chapters 1-3)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Office of Indian Affairs proposes to adopt LAC 28:VII.Chapters 1-3, Indian Affairs Scholarship.

With assistance from the Louisiana Indian Educational Association, the Office of Indian Affairs annually provides awards to Native American students from Louisiana tribes to attend a college or higher education institution of their choice. The awards are funded through proceeds received from the renewal and sale of special prestige license plates for motor vehicles representing Native American culture in accordance with RS 47:463.78. Recipients are selected based on academic and financial need.

The proposed provisions incorporate the scholarship eligibility and review process into the Louisiana Administrative Code.

Title 28
EDUCATION
Part VIII. Indian Affairs Scholarship

Chapter 1. General Provisions

§101. Purpose

A. This Part establishes procedures for the Indian Affairs Scholarship Program. LAC 28:VIII outlines the process of applying for and awarding the American Indian Scholarship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2303 and R.S. 47:463.78.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Indian Affairs, LR 46:

§103. Enrollment

A. The scholarship applicant can enroll and be accepted into any institute of higher learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2303 and R.S. 47:463.78.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Indian Affairs, LR 46:

Chapter 3. Scholarship Application

§301. Application

A. Any student applying for the American Indian Scholarship must complete the application packet as provided through the Office of Indian Affairs. This application solicits the following data:

1. personal information;
2. financial information and verification; and
3. academic information and verification.

B. All applicants shall provide proof of tribal enrollment in a state-recognized Louisiana tribe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2303 and R.S. 47:463.78.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Indian Affairs, LR 46:

§303. Application Review

A. Applications will be reviewed on a competitive basis and selections will be based on the following criteria:

1. heritage;
2. financial need;
3. short essay answers; and
4. academic performance.

B. All applications must be received or postmarked by the deadline date on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2303 and R.S. 47:463.78.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Indian Affairs, LR 46:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as defined by R.S. 49:973.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments on these proposed rule changes to Pat Arnould, Executive Director, Louisiana Native American Commission, P.O. Box 94004 Baton Rouge, LA 70804-9004. Written comments must be submitted to and received by the Board within 30 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Commission within 20 days of the date of the publication of this notice.

Pat Arnould
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: American Indian Scholarship

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

There are no estimated implementation costs or savings to state or local governmental units associated with the proposed rule changes.

The Office of Indian affairs proposes to codify its current process for scholarship application and review, as provided by Act 1254 of the 1999 Regular Legislative Session.

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

The proposed rule change will have no estimated effect on revenue collections for state or local governmental units.

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

The proposed rule change will have no estimated effect to directly affected persons, small businesses, or non-governmental groups. The proposed rule codifies existing practices and does not increase scholarship awards above baseline levels.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no estimated effect on competition and employment.

Par Arnould	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#025	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Board of Dentistry

CDC Inspection Violation Expungement;
Nitrous Oxide Analgesia
(LAC 46:XXXIII.322 and 1502)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health, Board of Dentistry intends to amend LAC 46:XXXIII.322 and 1502.

The Board of Dentistry intends to amend LAC 46:XXXIII.322 to allow a dentist to apply for an expungement of a consent decree for a first time CDC inspection violation(s).

The Board of Dentistry intends to amend LAC 46:XXXIII.1502 to allow dentists to not have to obtain an office or personal permit for a nitrous oxide analgesia permit because the board deemed this permit unnecessary.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXXIII. Dental Health Professions
Chapter 3. Dentists
§322. Expungement of Disciplinary Actions

A1. - A.4. …

B. A dentist may apply for the expungement of a first time CDC inspection violation provided:

1. a period of three years has elapsed from the date the consent decree was executed by the board president or order issued after a disciplinary hearing;
2. the dentist has not had any subsequent disciplinary actions of any kind taken against him by the board or any other licensing or certifying agency since the initial advertising violation in question;
3. has no disciplinary actions or investigations pending at the time of request;
4. the board will retain all records relative to the first violation, and it may use same in connection with future disciplinary proceedings, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 33:2562 (December 2007), amended by Department of Health, Board of Dentistry, LR 46:

Chapter 15. Anesthesia/Analgesia Administration
§1502. Types of Permits

A.1. - 2. …

B. In order for anyone to perform any type of sedation or general anesthesia beyond minimal sedation or nitrous oxide analgesia in conjunction with dental procedures in a dental office or in any facility in which dentistry is being performed, an office permit must have been issued by the board for that location, subject to the exceptions in R.S. 37:793(H). The office permit must be for the level of sedation or general anesthesia equal to or higher than the level to be performed. No office or personal permit is required for minimal sedation and no office permit is required for nitrous oxide analgesia.

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:53 (January 2016), amended by Department of Health, Board of Dentistry, LR 46:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Poverty Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

The proposed rulemaking will not have any foreseeable impact on small businesses.

Provider Impact Statement

The proposed rulemaking should not have any know or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect of the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on these proposed rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, P.O. Box 5256, Baton Rouge, Louisiana, 70821. Written comments must be submitted to and received by the Board within 20 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the Board within 20 days of the date of the publication of this notice.

Public Hearing

A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: CDC Inspection Violation Expungement; Nitrous Oxide Analgesia

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

The proposed rule change will result in a one-time SGR expenditure of $500 in FY 21 for the LA State Board of Dentistry (LSBD) to publish the notice of intent and proposed rule change in the Louisiana Register. The proposed rule change will not affect expenditures of local governmental units.

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

The proposed rule change will not affect revenue collections of state or local governmental units.

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

The proposed rule change for expungements of a consent decree of a first time CDC inspection violation(s) will directly affect any dentist who signed a consent decree in the past. The dentists will now be allowed to have a consent decree for first time CDC inspection violation(s) expunged with the board and it will not show on his or her public record with the board.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Arthur Hickham, Jr.	Christopher Keaton
Executive Director	Legislative Fiscal Officer
2009#038	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Act 421 Children's Medicaid Option
(LAC 50:XXII.Chapters 81-85)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to adopt LAC 50:XXII.Chapters 81-85 in the Medical Assistance Program as authorized by R.S. 36:254, 46:977.21-977.25 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 has expenditure authority under section 1115 of the Social Security Act to claim the costs of services provided under a risk contract to eligible individuals as medical assistance. Act 421 of the 2019 Regular Session of the Louisiana Legislature directed the department to establish the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) option within the Medical Assistance Program through which children with disabilities can access

Medicaid-funded services regardless of their parents' income. In compliance with Act 421, the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to adopt provisions to establish the Act 421 Children's Medicaid Option program as a section 1115 demonstration waiver.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXII. 1115 Demonstration Waivers
Subpart 9. Act 421 Children's Medicaid Option
Chapter 81. General Provisions

§8101. Purpose

A. The purpose of the Act 421 Children's Medicaid Option (421-CMO) program is to provide Medicaid State Plan services to children with disabilities who meet the eligibility criteria set forth in this Subpart, despite parental or household income that would otherwise exclude them from Medicaid eligibility.

B. The Department of Health (LDH) has expenditure authority under section 1115 of the Social Security Act (Act) to claim as medical assistance the costs of services provided under a risk contract to eligible individuals. Through this section 1115 demonstration, the State is allowed to permit Medicaid managed care organizations (MCOs) to provide Medicaid State Plan services to children with disabilities regardless of their parents' and/or household income. LDH shall, subject to the approval of the Centers for Medicare and Medicaid Services (CMS), institute a program to provide health care services via the State's Medicaid program for the population contemplated under Section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248), subject to additional terms and conditions set forth in this Subpart.

C. 421-CMO enrollees are eligible for all medically necessary Medicaid State Plan services.

D. The number of enrollees in the 421-CMO program is contingent upon the amount appropriated by the Louisiana legislature annually for that purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8103. Effective Date and Administration

A. Services provided under the 421-CMO program shall begin upon approval of expenditure authority under section 1115 of the Act by CMS.

B. Upon approval by CMS, enrollment and start of services will commence at the beginning of the first calendar quarter after conclusion of the initial registration period.

C. The 421-CMO program shall be administered as a section 1115 demonstration waiver under the authority of LDH, in collaboration with the Healthy Louisiana MCOs.

D. The 421-CMO program is a demonstration waiver that will span five years. LDH may request approval for an extension of this section 1115 demonstration from CMS prior to the expiration date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8105. Enrollee Qualifications and Admissions Criteria

A. In order to qualify for the 421-CMO program, an individual must meet both programmatic eligibility and clinical eligibility criteria as set forth in this Subpart.

B. Programmatic eligibility. In order to be programmatically eligible for the 421-CMO program, an individual must meet all of the following criteria:

1. Is 18 years of age or younger (under 19 years of age).
2. Is a U.S. Citizen or qualified alien.
3. Is a Louisiana resident.
4. Has or has applied for a Social Security Number.
5. Has countable resources of $2,000 or less (parental/household resources not considered).
6. Has care needs that can be safely met at home at a lower cost than the cost of services provided in an institutional setting.
7. Maintains pre-existing private health insurance for major medical coverage, either through employer sponsored insurance, the federal marketplace, or other independently purchased commercial health insurance, unless a hardship exception is applied for and granted by LDH.

a. LDH will employ a look-back period of one 180 days to determine pre-existing private health insurance.

b. Lock-out period. If LDH determines that a family or responsible adult has discontinued pre-existing private health insurance, either during the look-back period or at any time during the enrollee's enrollment in the 421-CMO program, LDH will impose a lock-out.

c. During the lock-out period, the enrollee will be unable to receive services, but will retain his or her enrollment in the 421-CMO program.

d. The lock-out period will end when the enrollee demonstrates new or former pre-existing private health insurance has been re-instated.

e. The lock-out period will extend up to 180 days from discontinuation of pre-existing private health insurance or 421-CMO program offer, whichever date is later.

f. At the conclusion of the 180 day lock-out period, if the enrollee has not re-instated the pre-existing private health insurance, the enrollee will be terminated from the 421-CMO program.

g. If terminated, the individual can re-register for the 421-CMO program and be placed on the 421-CMO registry as a new applicant.

h. Hardship Exception. The enrollee can apply for a hardship exception at any time, including during a lock-out period.

i. A hardship exists when:

(a). private health insurance premiums and any additional deductibles and co-payments or out of pocket healthcare costs for the individual obtaining coverage equal or exceed 5 percent of the household income;

(b). unemployment resulting in loss of employer-sponsored private insurance for the child; or

(c). an exemption period of 90 days for transition to new employment, after which the enrollee must resume private health insurance.

ii. LDH's grant of a hardship exception will end the lock-out period.

8. Is not otherwise eligible for Medicaid or CHIP.

C. Clinical eligibility. In order to be clinically eligible for the 421-CMO program, an individual must meet all of the following criteria:

1. Has a disability, defined as a medically determinable physical or mental impairment (or combination of impairments) that:

a. results in marked and severe functional limitations; and

b. has lasted or is expected to last for at least one year or to result in death.

2. Meets the medical necessity requirement, assessed on an annual basis, for institutional placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID), a nursing facility, or a hospital.

a. An individual meets ICF/IID level of care when he/she:

i. has obtained a statement of approval from the Office for Citizens with Developmental Disabilities, confirming that he has a developmental disability as defined in R.S. 28:451.2; and

ii. meets the requirements for active treatment of a developmental disability under the supervision of a qualified developmental disability professional, as prescribed on Form 90-L.

b. An individual meets nursing facility level of care when he demonstrates the following, assessed in accordance with the Act 421 Children's Medicaid Option Assessment Tool:

i. the need for skilled nursing and/or therapeutic interventions on a regular and sustained basis; and

ii. substantial functional limitations as compared to same age peer group in two of the following areas: learning, communication, self-care, mobility, social competency, money management (for children 18 and older), work, and meal preparation.

c. An individual meets hospital level of care when he demonstrates the following, assessed in accordance with the Act 421 Children's Medicaid Option Assessment Tool:

i. frequent and complex medical care that requires the use of equipment to prevent life-threatening situations, with skilled medical care required multiple times during each 24-hour period;

ii. complex skilled medical interventions that are expected to persist for at least six months; and

iii. overall health condition that is highly unstable and presents constant potential for complications or rapid deterioration, with the result that the child requires continuous assessment by professional nurses, parents, or other properly instructed individuals, in order to detect unstable and life-threatening condition and respond promptly with appropriate care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8107. Admission Denial or Discharge Criteria

A. Individuals shall be denied admission to or discharged from 421-CMO program if any of the following criteria is met:

1. the individual does not meet the programmatic eligibility requirements for the 421-CMO program;

2. the individual does not meet the clinical eligibility requirements for the 421-CMO program;

3. the individual is incarcerated or placed under the jurisdiction of penal authorities, courts or state juvenile justice authorities;

4. the individual resides in another state or has a change of residence to another state;

5. the individual or responsible adult fails to cooperate in the eligibility determination/re-determination process; or

6. the 421-CMO enrollee is admitted to an ICF/IID, nursing facility, or hospital with the intent to not return to 421-CMO services;

a. the enrollee is deemed to intend to return to 421-CMO services when documentation is received from the treating physician that the admission is temporary and shall not exceed ninety (90) days;

b. the enrollee will be discharged from 421-CMO on the ninety-first (91st) day after admission if the enrollee is still in the ICF/IID, nursing facility, or hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8107. Allocation of Act 421 Children's Medicaid Option Opportunities

A. The Act 421 Children's Medicaid Option request for services registry, hereafter referred to as the 421-CMO registry, shall be used to identify persons who meet ICF/IID, nursing facility, or hospital level of care who are waiting for a 421-CMO program slot. Individuals who are found eligible and who request 421-CMO program services will be added to the 421-CMO registry. Funded 421-CMO program slots will be offered in accordance with this Subpart.

B. Initial Registration

1. There will be an initial registration period lasting one month, during which time registration will occur in two pathways:

a. Online registration forms will be taken from individuals who are not currently on the intellectual/developmental disabilities (I/DD) request for services registry or otherwise enrolled in Medicaid.

b. Children 18 years of age and under (under 19) who are on the I/DD request for services registry and are not currently enrolled in Medicaid or CHIP will be automatically registered for participation.

i. Individuals receiving automatic placement on the 421-CMO registry will receive a preprinted mailed form explaining the 421-CMO program and that they are automatically registered. The form will provide them with the opportunity to opt out of participation, and if they do not opt out, attest to prioritization needs per the process set forth in this Subpart.

2. LDH will create a numerically ordered 421-CMO registry based on individuals that registered during the initial registration period, placing them in random order.

3. Individuals registered during the initial registration period will receive 421-CMO program offers according to the prioritization process established in this Subpart first. Once priority offers are complete, 421-CMO program offers will then be made in numeric order of the 421-CMO registry.

4. Individuals who do not receive 421-CMO program offers will remain on the 421-CMO registry in the numeric order assigned, with a protected registry date corresponding to the close of the initial registration period.

C. Ongoing Registration. After the initial registration period and slot allocation, subsequent registrants for the 421-CMO program will be assigned a 421-CMO registry date based on the date on which they register and will receive an offer on a first-come, first-served basis unless otherwise prioritized as provided for in this Subpart. 421-CMO program offers will be made upon availability.

D. Prioritization

1. In order to ensure individuals with the most urgent needs receive services, LDH will prioritize 421-CMO program offers to individuals who meet either of the following criteria:

a. The individual has been institutionalized in an ICF/IID, nursing facility, or hospital for 30 of the preceding 90 days. Institutional days do not have to be consecutive.

b. On three or more separate occasions in the preceding 90 days, the individual has been admitted to an ICF/IID, nursing facility, or hospital and remained institutionalized for at least 24 hours.

2. An individual newly registering for 421-CMO program during ongoing registration may request and, if the individual qualifies, receive prioritization in order to receive the next available 421-CMO program offer. In addition, at any time an individual currently on the 421-CMO registry may request and, if the individual qualifies, receive prioritization.

3. Prioritization will be considered valid for a period of 180 days from the date that prioritization is approved while waiting for a 421-CMO program offer. At the expiration of the 180 days, if no 421-CMO program offer has been made, the individual loses prioritization but retains his or her original protected registry date for purposes of receiving a 421-CMO program offer.

a. If an individual's priority period has expired with no 421-CMO program offer available during that time period, he or she may request to requalify for prioritization.

i. If the individual qualifies without a break in the two priority periods (they are consecutive), he/she shall retain the original prioritization date.

ii. If the individual qualifies with a break in the priority periods, he/she shall receive a new prioritization date.

b. There is no limit on the number of times an individual may qualify for prioritization prior to receiving a 421-CMO program offer.

c. If more than one individual has received prioritization at one time, the next available 421-CMO program offer will be made to the individual with the earliest prioritization date.

4. Once enrolled in the 421-CMO program, enrollees will not be required to demonstrate ongoing need for prioritization. Prioritization is only a method of fast-tracking initial entry into the 421-CMO program for families with the highest urgency of need.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8109. Eligibility and Enrollment

A. Upon extension of a 421-CMO program offer to an individual, the individual will need to establish programmatic and clinical eligibility by showing he or she meets all eligibility criteria. When eligibility is determined, the individual will be enrolled in the 421-CMO program and with a health and dental plan of their choice.

B. Louisiana Health Insurance Premium Payment Program (LaHIPP)

1. Enrollees in the 421-CMO program shall be enrolled in LaHIPP when cost-effective health plans are available through the individual's employer or a responsible party's employer-based health plan or other health insurance if the individual is enrolled or eligible for such a health plan.

2. All requirements and coverage through the LaHIPP program shall follow the provisions set forth in LAC 50:III.2311 except that 421-CMO program enrollees enrolled in LaHIPP shall receive their Medicaid benefits through managed care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

Chapter 83. Services

§8301. Covered Services

A. The coverage of 421-CMO services under the scope of this demonstration are all services offered under the Louisiana Medicaid State Plan.

B. All 421-CMO services must be medically necessary. The medical necessity for services shall be determined by a licensed professional or physician who is acting within the scope of his/her professional license and applicable state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§8303. Service Delivery

A. Louisiana's Act 421 Children's Medicaid Option delivery system is based on an integrated managed care model for physical and behavioral health services. Under this demonstration, Healthy Louisiana will continue to operate as approved in Section 1932(a) state plan authority for managed care and concurrent 1915(b) demonstration.

B. Enrollees in the 421-CMO program shall be mandatorily enrolled in Healthy Louisiana and in a dental benefits prepaid ambulatory health plan. They shall have the opportunity to choose a health and dental plan upon

application. If they do not choose a plan, one will be automatically assigned to them upon enrollment per the current methodology outlined in the Medicaid State Plan.

C. Enrollees shall be designated as a special health care needs group, entitling recipients to receive case management and enhanced care coordination through their managed care plan.

D. All of the covered services under the 421-CMO program shall be delivered in accordance with the Medicaid State Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

Chapter 85. Reimbursement

§8501. Reimbursement Methodology

A. For 421-CMO program enrollees, LDH or its fiscal intermediary shall make monthly capitation payments to the managed care organizations (MCOs) and dental benefits prepaid ambulatory health plans for the provision of all covered services. The capitation rates paid to the MCOs and dental benefits prepaid ambulatory health plans shall be actuarially sound rates, and the MCOs and dental benefits prepaid ambulatory health plans will determine the rates paid to its contracted providers. No payment shall be less than the minimum Medicaid fee-for-service fee schedule on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:977.21-977.25, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

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 as it will provide access to Medicaid services for qualified children with disabilities.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it provides access to Medicaid services for qualified children with disabilities.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule authorizes payments to providers for these services.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Act 421 Children's Medicaid Option

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately $4,846,122 for FY 20-21, $9,199,762 for FY 21-22 and $9,199,762 for FY 22-23. It is anticipated that $2,160 ($1,080 SGF and $1,080 FED) will be expended in FY 20-21 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 federal revenue collections by approximately

$9,546,282 for FY 20-21, $18,790,482 for FY 21-22, and $18,790,482 for FY 22-23. It is anticipated that $1,080 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

Act 421 of the 2019 Regular Session of the Louisiana Legislature directed the department to establish the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) option within the Medical Assistance Program through which children with disabilities can access Medicaid-funded services regardless of their parents' income. This proposed Rule, in compliance with Act 421, adopts provisions to establish the Act 421 Children's Medicaid Option program as a demonstration waiver under section 1115 of the Social Security Act. This proposed Rule will be beneficial to recipients by allowing qualified children with disabilities to access Medicaid-funded services regardless of their parents' income. Providers will benefit from implementation of this proposed Rule since they will receive reimbursement for the provision of services that were previously not covered for this population. It is anticipated that implementation of this proposed Rule will increase expenditures for Medicaid services by approximately $14,390,244 for FY 20-21, $27,990,244 for FY 21-22, and $27,990,244 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson
Executive Director
2010#051

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing
and
Office of Behavioral Health

Adult Mental Health Services—Peer Support Services
(LAC 50:XXXIII.6307)

The Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 50:XXXIII.6307 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.

On June 6, 2018, the Department of Health signed an agreement with the United States Department of Justice which requires the department to ensure that peer support specialists are incorporated into behavioral health services. Senate Concurrent Resolution (SCR) 84 of the 2019 Regular Session of the Louisiana Legislature requested the Department of Health to take all steps necessary to approve peer support services as a Medicaid covered service. In compliance with SCR 84 and the agreement with the United States Department of Justice, the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend the provisions governing adult mental health services in order to add peer support services as a covered service.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXXIII. Behavioral Health Services
Subpart 7. Adult Mental Health Services
Chapter 63. Services
§6307. Covered Services

A. The following mental health services shall be reimbursed under the Medicaid Program:

1. ...

2. rehabilitation services, including community psychiatric support and treatment (CPST), psychosocial rehabilitation (PSR), and peer support services; and

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

AUTHORITY NOTE: Promulgated in 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 38:359 (February 2012), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Behavioral Health, LR 44:1015 (June 2018), LR 46:795 (June 2020), repromulgated LR 46:952 (July 2020), amended LR 46:

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 as it provides access to peer support services.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it provides access to peer support services.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule authorizes payments to providers for these services.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Adult Mental Health Services—Peer Support Services

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately $1,814,987 for FY 20-21, $2,082,360 for FY 21-22 and $2,134,419 for FY 22-23. It is anticipated that $540 ($270 SGF and $270 FED) will be expended in FY 20-21 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 federal revenue collections by approximately $4,312,483 for FY 20-21, $4,350,633 for FY 21-22, and $4,459,399 for FY 22-23. It is anticipated that $270 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, in compliance with an agreement with the United States Department of Justice and Senate Concurrent Resolution 84 of the 2019 Regular Session of the Louisiana Legislature, amends the provisions governing adult mental health services in order to add peer support services as a covered service. This will be beneficial to recipients ages 21 years and older who are in need of this service. This proposed Rule will be beneficial to providers by permitting Medicaid reimbursement for services provided by trained, certified peers. It is anticipated that implementation of this proposed Rule will increase expenditures for behavioral health services by approximately $6,126,660 for FY 20-21, $6,432,993 for FY 21-22, and $6,593,818 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#052	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing
and
Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Individual and Family Support Payments
(LAC 50:XXI.13701,13902,13927,13933, and 14301)

The Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.13701, §13927, and §14301, adopt §13902, and repeal §13933 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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community-Based Services Waivers
Subpart 11. New Opportunities Waiver
Chapter 137. General Provisions
§13701. Introduction

A. - D. ...

E. Only the following NOW services shall be provided for, or billed for, during the same hours on the same day as any other NOW service:

1. ...
2. supported independent living; and
3. skilled nursing services.

a. Skilled nursing services may only be provided with:

i. substitute family care;
ii. supported independent living;

iii. day habilitation;

iv. supported employment (all three modules); and/or

v. prevocational services

4. - 4.e. Repealed.

F. - 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 Community Supports and Services, LR 30:1201 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1647 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 40:68 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:50 (January 2018), LR 45:42 (January 2019), LR 46:

Chapter 139. Covered Services

§13902 Individual and Family Support Supplemental Payments

A. Supplemental payments will be made to licensed HCBS providers with a PCA module who support individuals currently receiving qualified waiver services who have complex medical and/or behavioral needs and are at a higher risk of institutionalization.

1. The integration of the supplemental payment provides additional funding to licensed HCBS providers with a PCA module who provide supports that focus on the prevention of deteriorating or worsening medical or behavioral conditions for individuals with complex needs.

2. The provider will be required to complete a screening tool and submit initial documentation as outlined in the program manual prior to qualifying for any supplemental payment. The supplemental payment will be re-evaluated annually to determine ongoing need per program requirements.

3. The PCA providers must be licensed home and community-based services (HCBS) providers with a personal care attendant module in order to receive the supplemental payment, in addition to the criteria listed in §13902 B.

B. Determination Process: A PCA provider can qualify for a supplemental payment if the individual currently receiving qualified waiver services has a complex medical and/or behavioral need.

1. Complex Medical

a. Individuals must require at least two of the following non-complex tasks delegated by a registered nurse to a non-licensed direct service worker:

i. suctioning of a clean, well-healed, uncomplicated mature tracheostomy in an individual who has no cardiopulmonary problems and is able to cooperate with the person performing the suctioning (excludes deep suctioning);

ii. care of a mature tracheostomy site;

iii. removing/cleaning/replacing inner tracheostomy cannula for mature tracheostomy;

iv. providing routine nutrition, hydration or medication through an established gastrostomy or jejunostomy tube (excludes nasogastric tube);

v. clean intermittent urinary catheterization;

vi. obtaining a urinary specimen from a port of an indwelling urinary catheter;

vii. changing a colostomy appliance;

viii. ensuring proper placement of nasal cannula (excludes initiation/changing of flow rate;

ix. capillary blood glucose testing;

x. simple wound care (including non-sterile/clean dressing removal/application); or

xi. other delegable non-complex tasks as approved by OCDD in accordance with LAC 48:1 Chapter 92 Subchapter D.

2. Behavioral

a. The individual meets two of the following items:

i. specific behavioral programming/procedures are required, or the individual receives behavioral health treatment/therapy and needs staff assistance on a daily basis to complete therapeutic homework or use skills/coping mechanisms being addressed in therapy;

ii. staff must sometimes intervene physically with the individual beyond a simple touch prompt or redirect, or the individual's environment must be carefully structured based on professionally driven guidance/assessment to avoid behavior problems or minimize symptoms; or

iii. a supervised period of time away, outside of the individual's weekly routine, such as work, school or participation in his/her community, is needed at least once per week; and

b. the individual requires one of the following due to the items listed in a.-a.iii above:

i. higher credentialed staff (college degree, specialized licensing, such as registered behavior technician [RBT], applied behavior analysis [ABA], etc.), who have advanced behavioral training for working with individuals with severe behavioral health symptoms or significant experience working with this population; or

ii. the need for higher qualified supervision of the direct support of staff (master's degree, additional certification, such as board certified behavior analyst [BCBA], etc.).

C. The supplemental payment is not allowed for waiver participants who do not receive individual and family support (IFS) services.

D. The supplemental payment may not be approved for waiver participants receiving IFS hours in addition to 12 or more hours of skilled nursing per day.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 46:

§13927. Skilled Nursing Services

A. - B. ...

C. Provider Qualifications. The provider must be licensed by the Department of Health as a home health agency.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1208 (June 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1651 (August 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for

Citizens with Developmental Disabilities, LR 40:77 (January 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:56 (January 2018), LR 46:

§13933 Complex Care

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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 45:43 (January 2019), repealed LR 46:

Chapter 143. Reimbursement

§14301. Unit of Reimbursement

A. - B.3. ...

C. The following services are paid through a per diem:

1.- 4. ...

5. individual and family support supplemental payment.

D. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:1209 (June 2004), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:252 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1851 (September 2009), LR 36:1247 (June 2010), LR 37:2158 (July 2011), LR 39:1049 (April 2013), LR 40:80 (January 2014), LR 42:898 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 44:58 (January 2018), LR 45:44 (January 2019), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based Services Waivers—New Opportunities Waiver Individual and Family Support Payments

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately $269, 973 for FY 20-21, $1,547,696 for FY 21-22 and $2,769,618 for FY 22-23. It is anticipated that $1,188 ($594 SGF and $594 FED) will be expended in FY 20-21 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 federal revenue collections by approximately $554,499 for FY 20-21, $3,233,572 for FY 21-22, and

$5,786,509 for FY 22-23. It is anticipated that $594 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the New Opportunities Waiver in order to change the complex care service to a supplemental payment and to update skilled nursing provider qualifications to reflect the current licensing requirements. This change is necessary based on Centers for Medicare and Medicaid Services (CMS) guidance and the decision by CMS to not approve Complex Care as a service. It is anticipated that this proposed Rule will beneficial to providers because of an increase in supplemental payments. It is anticipated that implementation of this proposed Rule will increase expenditures for NOW services by approximately $823,284 for FY 20-21, $4,781,268 for FY 21-22, and $8,556,127 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#053	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Hospital Licensing Standards
(LAC 48:I.9301)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:II.9301 as authorized by R.S. 36:254 and R.S. 40:2100-2115. 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, Bureau of Health Services Financing proposes to amend the provisions governing hospital licensing standards in order to clarify the definition of licensed hospitals that are primarily engaged in providing inpatient hospital services and to identify those that are not subject to the primarily engaged provisions of the *Louisiana Administrative Code*.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 93. Hospitals
Subchapter A. General Provisions
§9301. Purpose

A. - B. ...

C. Primarily Engaged

1. Except as provided in §9301.C.2, hospitals shall be *primarily engaged*, as defined by this Rule and determined by the Department of Health, in providing inpatient hospital services to inpatients, by or under the supervision of licensed physicians. Inpatient hospital services are services defined in this licensing rule and are provided to inpatients of the hospital as one of the following:

a. - b. ...

2. Exemptions. The following licensed hospitals are not subject to the primarily engaged provisions and/or requirements of this Chapter:

a. a licensed hospital designated as a psychiatric hospital or a critical access hospital as defined by the Code of Federal Regulations;

b. a licensed hospital designated as a rural hospital as defined by R.S. 40:1189.3; and

c. a licensed hospital currently certified and enrolled as a Medicare/Medicaid certified hospital which has not been determined out of compliance with the federal definition of *primarily engaged*; if a hospital is currently Medicare/Medicaid certified, and has been determined to be currently meeting the federal definition of *primarily engaged*, it shall be exempt from compliance with the following provisions in this section regarding primarily engaged.

C.3. - E.9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:254 and R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2399 (November 2003), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1474 (October 2019), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello is responsible for

responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at close of business, 4:30 p.m., on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Hospital 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 20-21. It is anticipated that $540 will be expended in FY 20-21 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

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

This proposed Rule amends the provisions governing hospital licensing standards in order to clarify the definition of licensed hospitals that are primarily engaged in providing inpatient hospital services and to identify those that are not subject to the primarily engaged provisions of the Louisiana Administrative Code. This rule revision allows certain hospitals to continue to be paid at a rate consistent with those who are considered to be primarily engaged by federal definition, as long they have remained in compliance with the federal requirements of primarily engaged. It is anticipated that implementation of this proposed rule will not result in costs to the State or to hospital providers for FY 20-21, FY 21-22 and FY 22-23, but will be beneficial by providing accurate, clearly identified licensing requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson
Executive Director
2009#054

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Hospital Provider Fee Assessment
(LAC 48:I.4001)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4001 as authorized by R.S. 36:254 and R.S.46:2625. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

House Concurrent Resolution (HCR) 2 of the 2020 First Extraordinary Session of the Louisiana Legislature provided for a hospital stabilization formula and directed the Department of Health, Bureau of Health Services Financing to calculate, levy and collect an assessment for each assessed hospital. In compliance with HCR 2, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing hospital provider fees to establish hospital assessments and related matters.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 1. General
Chapter 40. Provider Fees
§4001. Specific Fees

A. - F.4. ...

5. Pursuant to the provisions of House Concurrent Resolution 2 of the 2020 First Extraordinary Session of the Louisiana Legislature, subject to the approval of the Centers for Medicare and Medicaid Services, any hospital under 50 beds shall be exempt from the hospital assessment from January 1, 2020 through July 31, 2020.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and P.L. 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887, 1888 (November 2016), LR 43:73 (January 2017), repromulgated LR 43:323 (February 2017), amended LR 44:1015 (June 2018), LR 44:1894 (October 2018), LR 45:1597 (November 2019), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Hospital Provider Fee Assessment

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 20-21. It is anticipated that $540 ($270 SGF and $270 FED) will be expended in FY 20-21 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 decrease statutory dedicated revenue collections by approximately $6,450,983 for FY 20-21, and $0 for FY 21-22 and FY 22-23. In addition, it is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately $58,058,577 for FY 20-21, and $0 for FY 21-22, and FY 22-23. It is anticipated that $270 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

In compliance with House Concurrent Resolution 2 of the 2020 First Extraordinary Session of the Louisiana Legislature, this proposed rule amends the provisions governing hospital provider fees in order to calculate, levy and collect an assessment for each assessed hospital. This rule temporarily suspends the assessment associated with a subset of hospitals that have less than 50 beds that otherwise would be subject to the provider assessment. It is anticipated that implementation of this proposed rule will reduce federal revenue collections and dedicated revenue collections by approximately $64,509,830 for FY 20-21 and $0 for FY 21-22 and FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#055	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Adjustment
(LAC 50:V.Chapters 5 and 9)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.Chapters 5 and 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.

House Concurrent Resolution (HCR) 2 of the 2020 First Extraordinary Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to adjust the reimbursement rates for inpatient hospital services. In compliance with the requirements of HCR 2, the department proposes to amend the provisions governing the reimbursement methodology for inpatient hospital services in order to adjust the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals Services
Chapter 5. State Hospitals
Subchapter B. Reimbursement Methodology
§553. Inpatient Psychiatric Services for State Owned Hospitals

A. - A.1. ...

B. Effective for dates of service on or after January 1, 2021, the prospective per diem rate paid to state owned free-standing psychiatric hospitals, and distinct part psychiatric units within state owned acute care hospitals, shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 45:1770 (December 2019), amended LR 46:

Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§953. Acute Care Hospitals

A. - W.2. ...

X. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

1. Small rural hospitals as defined in R.S. 40:1300 and public-private partnership hospitals as defined in LAC 50:V.1701-1703 shall be exempt from this rate increase.

2. Carve-out specialty units, nursery boarder, and well-baby services are included in these rate increases.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895, 1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1939, 1940 (October 2014), LR 41:133 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:963 (May 2017), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1389 (July 2017), repromulgated LR 43:1757 (September 2017), amended LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019), LR:46:

§955. Long-Term Hospitals

A. - M. ...

N. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to long-term acute hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), repromulgated LR 44:1445 (August 2018), amended LR 45:1770 (December 2019), LR 46:

§959. Inpatient Psychiatric Hospital Services

A. - O.2. ...

P. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to non-rural, non-state free-standing psychiatric hospitals, and distinct part psychiatric units within non-rural, non-state acute care hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

1. Inpatient hospital psychiatric services provided under a public-private partnership as defined in §959.L of this Chapter, LAC 50:V.1701 and LAC 50:V.2901 shall be exempt from this rate increase.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 39:94 (January 2013), LR 39:323 (February 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2533 (December 2017), amended LR 44:1446 (August 2018), LR 45:1771 (December 2019), LR 46:

§961. Inpatient Rehabilitation Hospital Services

A. - B.4. ...

5. Effective for dates of service on or after January 1, 2021, the inpatient per diem rate paid to non-rural, non-state free-standing rehabilitation hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:2533 (December 2017), amended LR 44:1446 (August 2018), LR 45:1771 (December 2019), LR 46:

§967. Children's Specialty Hospitals

A. - O. ...

P. Effective for dates of service on or after January 1, 2021, the inpatient per diem rates paid to children's specialty hospitals for acute, neonatal intensive care units, pediatric intensive care units and burn units' services shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

Q. Effective for dates of service on or after January 1, 2021, the inpatient per diem rates paid to distinct part psychiatric units within children's specialty hospitals shall be increased by 3.2 percent of the per diem rate on file as of December 31, 2020.

AUTHORITY NOTE: Promulgated in 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 36:2562 (November 2010), amended LR 37:2162, 2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014), amended LR 40:1941 (October 2014), LR 42:275 (February 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 45:1771 (December 2019), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Inpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately $1,808,703 for FY 20-21, $7,944,937 for FY 21-22 and $7,944,937 for FY 22-23. It is anticipated that $972 ($486 SGF and $486 FED) will be expended in FY 20-21 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 statutory dedicated revenue collections by approximately $1,808,217 for FY 20-21, $7,944,937 for FY 21-21 and $7,944,937 for FY 22-23 In addition, it is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $6,401,339 for FY 20-21, $25,559,893 for FY 21-22, and $25,559,893 for FY 22-23. It is anticipated that $486 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, in compliance with House Concurrent Resolution 2 of the 2020 First Extraordinary Session of the Louisiana Legislature, amends the provisions governing the reimbursement methodology for inpatient hospital services in order to adjust the reimbursement rates. Inpatient hospital providers will benefit from implementation of this proposed

Rule as it increases reimbursement rates. It is anticipated that implementation of this proposed Rule will increase expenditures for inpatient hospital services by approximately $8,209,070 for FY 20-21, $33,504,830 for FY 21-22, and $33,504,830 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#056	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Nursing Facilities—Optional State Assessment
(LAC 50:II.10123 and 20001)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.10123 and 20001 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.

In compliance with the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Health, Bureau of Health Services Financing amended the provisions governing nursing facility reimbursements in order to mandate the use of the optional state assessment item set to replace Medicare prospective payment system assessments retired by CMS due to the implementation of the patient driven payment model(*Louisiana Register*, Volume 46, Number 5). The department now proposes to amend the provisions governing nursing facility reimbursements in order to remove the requirements of the May 20, 2020 Rule for the optional state assessment item from the *Louisiana Administrative Code* due to the decision by CMS to delay implementation of the patient driven payment model.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 3. Standards for Payment
Chapter 101. Standards for Payment for Nursing Facilities
Subchapter D. Resident Care Services
§10123. Comprehensive Assessment

A. - G.4.c. ...

H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended by the Department of Health, Bureau of Health Services Financing, LR 46:695 (May 2020), LR 46:

Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20001. General Provisions

A. Definitions

* * *

Minimum Data Set (MDS)—a core set of screening and assessment data, including common definitions and coding categories that form the foundation of the comprehensive assessment for all residents of long-term care nursing facility providers certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within nursing facility providers, between nursing facility providers, and between nursing facility providers and outside agencies. The Louisiana system will employ the current required MDS assessment as approved by the Centers for Medicare and Medicaid Services (CMS).

* * *

B. - C.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1522 (September 2016), LR 43:525 (March 2017), LR 43:2187 (November 2017), LR 46:695 (May 2020), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has

been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities
Optional State Assessment

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 20-21. It is anticipated that $648 ($324 SGF and $324 FED) will be expended in FY 20-21 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 have no effect on revenue collections other than the federal share of the promulgation costs for FY 20-21. It is anticipated that $324 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing nursing facility reimbursements in order to remove the requirements of the May 20, 2020 Rule for the optional state assessment item from the Louisiana Administrative Code due to the decision by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services to delay implementation of the patient driven payment model. This proposed Rule will have no impact on small businesses. It is anticipated that implementation of this proposed rule will not result in costs to nursing facilities in FY 20-21, FY 21-22 and FY 22-23, but will be beneficial by reassuring that current practices are in compliance with federal law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#057	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Nursing Facilities—Reimbursement Methodology
(LAC 50:II.20005)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.20005 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, Bureau of Health Services Financing proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to increase the allowable square footage for calculating payments when a Medicaid participating nursing facility has at least 15 percent of its licensed beds in private rooms.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination

A. - D.3.b. ...

i. Each nursing facility's actual square footage per bed is multiplied by the January 1, 2003 new value per square foot, plus $9.75 for land. The square footage used shall not be less than 300 square feet or more than 450 square feet per licensed bed. If 15 percent or more of the nursing facility's licensed beds are private rooms compared to the total licensed beds of the nursing facility, then the maximum square footage used shall not be more than 550 square feet per licensed bed. To this value add the product of total licensed beds times $4,000 for equipment, sum this amount and trend it forward using the capital index. This trended value shall be depreciated, except for the portion related to land, at 1.25 percent per year according to the weighted age of the facility. Bed additions, replacements and renovations shall lower the weighted age of the facility. The maximum age of a nursing facility shall be 30 years. Therefore, nursing facilities shall not be depreciated to an amount less than 62.5 percent or [100 percent minus (1.25

percent*30)] of the new bed value. There shall be no recapture of depreciation.

D.3.b.ii. - Q. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:902 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:3097, 3097 (November 2013), LR 41:707 (April 2015), LR 41:949 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:82 (January 2017), LR 43:526 (March 2017), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the same services they already render.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities Reimbursement Methodology

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

It is anticipated that implementation of this proposed rule will result in an estimated cost to the state of approximately $1,541,790 for FY 20-21, $1,837,724 for FY 21-22 and 1,837,724 for FY 22-23. It is anticipated that $648 ($324 SGF and $324 FED) will be expended in FY 20-21 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 federal revenue collections by approximately $3,662,998 for FY 20-21, $3,839,520 for FY 21-22, and $3,839,520 for FY 22-23. It is anticipated that $324 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing the reimbursement methodology for nursing facilities in order to increase the allowable square footage for calculating payments when a Medicaid participating nursing facility has at least 15 percent of its licensed beds in private rooms. This proposed Rule will have no impact on small businesses. It is anticipated that implementation of this proposed rule will increase programmatic expenditures for nursing facility services by approximately $5,204,140 for FY 20-21, $5,677,244 for FY 21-22 and $5,677,244 for FY 22-23, and may be beneficial to some nursing facilities that qualify for a higher per diem rate.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson
Executive Director
2009#058

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Adjustment
(LAC 50:V.5313, 5319, and 5715)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, §5319, and §5715 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.

House Concurrent Resolution (HCR) 2 of the 2020 First Extraordinary Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to adjust the reimbursement rates for outpatient hospital services. In compliance with the requirements of HCR 2, the department proposes to amend the provisions governing the reimbursement methodology for outpatient hospital services in order to adjust the reimbursement rates.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 5. Outpatient Hospital Services
Chapter 53. Outpatient Surgery
Subchapter B. Reimbursement Methodology
§5313. Non-Rural, Non-State Hospitals

A. - L.1. ...

M. Effective for dates of service on or after January 1, 2021, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be increased by 3.2 percent of the rates on file as of December 31, 2020.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

AUTHORITY NOTE: Promulgated in 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 Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2534 (December 2017), LR 44:2166 (December 2018), LR 45:1773 (December 2019), LR 46:

§5319. State-Owned Hospitals

A. - C. ...

D. Effective for dates of services on or after January 1, 2021, the reimbursement rates paid to state-owned hospitals for outpatient surgery shall be increased by 3.2 percent of the fee schedule rates on file as of December 31, 2020.

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 Services Financing, LR 38:2773 (November 2012), amended LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1773 (December 2019), LR 46:

Chapter 57. Laboratory Services
Subchapter B. Reimbursement Methodology
§5715. State-Owned Hospitals

A. - B. ...

C. Effective for dates of service on or after January 1, 2021, the reimbursement rates paid to state-owned hospitals for outpatient laboratory services shall be reimbursed at 100 per cent of the current Medicare clinical laboratory fee schedule.

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 Service Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:315 (February 2014), LR 46:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

In compliance with Act 820 of the 2008 Regular Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.2 et seq.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers.

Public Comments

Interested persons may submit written comments to Ruth Johnson, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Johnson is

responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on October 30, 2020.

Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on October 12, 2020. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on October 29, 2020 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after October 12, 2020. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Outpatient Hospital Services Non-Rural, Non-State Hospitals Reimbursement Rate Adjustment

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

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately $133,864 for FY 20-21, $536,395 for FY 21-22 and $536,395 for FY 22-23. It is anticipated that $648 ($324 SGF and $324 FED) will be expended in FY 20-21 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 statutory dedicated revenue collections by approximately $133,540 for FY 20-21, $536,395 for FY 21-21 and $536,395 for FY 22-23 In addition, it is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately $473,038 for FY 20-21, $1,725,652 for FY 21-22, and $1,725,652 for FY 22-23. It is anticipated that $324 will be collected in FY 20-21 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule, in compliance with House Concurrent Resolution 2 of the 2020 First Extraordinary Session of the Louisiana Legislature, amends the provisions governing the reimbursement methodology for outpatient hospital services in order to adjust the reimbursement rates. Outpatient hospital providers will benefit from implementation of this proposed Rule as it increases reimbursement rates. It is anticipated that implementation of this proposed Rule will increase expenditures for outpatient hospital services by approximately $606,254 for FY 20-21, $2,262,047 for FY 21-22, and $2,262,047 for FY 22-23.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson	Christopher A. Keaton
Executive Director	Legislative Fiscal Officer
2009#059	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Gaming Control Board

Inspections of Facilities (LAC 42:III.2117)

The Department of Public Safety and Corrections, Louisiana Gaming Control Board, in accordance with R.S. 27:15, R.S. 27:24, and the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., hereby gives notice that it intends to amend LAC 42:III.2117, Certification Required, Riverboat Only. This rule change clarifies practices already required to take place in the industry and creates uniformity. The rule change provides for the process of inspections of facilities.

Title 42
LOUISIANA GAMING
Part III. Gaming Control Board
Chapter 21. Licenses and Permits
§2117. Certification Required, Riverboat Only

A. - A.2.c. …

3. If operating in a facility, that the facility has a valid certificate of compliance issued by the board.

a. To satisfy this requirement, the facility must satisfy the applicable provisions of the National Fire Protection Association Life Safety Code* and the International Building Code as adopted in the state of Louisiana, pass inspection with the state fire marshal, satisfy local and state building codes and laws, and be issued a certificate of occupancy.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1612 (July 2012), amended LR 40:1380 (July 2014), LR 44:2216 (December 2018), LR 46:

Family Impact Statement

Pursuant to the provisions of R.S. 49:972, the Gaming Control Board, through its chairman, has considered the potential family impact of the proposed Rule.

The proposed Rule has no known impact on the following:

1. The effect on stability of the family.
2. The effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
4. The effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule.

Poverty Impact Statement

Pursuant to the provisions of R.S. 49:973, the Gaming Control Board, through its chairman, has considered the potential poverty impact of the proposed Rule.

The proposed Rule has no known impact on impact on the following:

1. The effect on household income, assets, and financial security.
2. The effect on early childhood development and preschool through postsecondary education development.
3. The effect on employment and workforce development.
4. The effect on taxes and tax credits.
5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

Pursuant to the provisions of La. R.S. 49:965.2- 965.8, the Regulatory Flexibility Act, the Louisiana Gaming Control Board, through its chairman, has concluded that the proposed Rule is not anticipated to have an adverse impact on small business; therefore, a Small Business Impact Statement has not been prepared.

Provider Impact Statement

Pursuant to the provisions of HCR170 of 2014, the Gaming Control Board, through its chairman, has considered the potential provider impact of the proposed Rule.

The proposed Rule has no known impact on impact on the following:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the costs to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to Earl G. Pitre, Jr., Assistant Attorney General, Louisiana Department of Justice, Gaming Division, 1885 North Third Street, Fifth Floor, Baton Rouge, LA 70802. All comments must be submitted no later than October 9, 2020.

Michael Noel
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Inspections of Facilities

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

The proposed rule change is anticipated to result in a minimal increase in the workload for existing staff within the Gaming Control Board as a result of the issuance of additional certificates of compliance to riverboat licensees. However, the additional workload related to issuing certificates of compliance can be accomplished utilizing existing personnel and budgetary resources.

The proposed rule change provides that the Gaming Control Board issue a certificate of compliance to riverboat licensees operating facilities that have satisfied the provisions of the National Fire Protection Association Life Safety Code and the International Building Code, pass inspection by the state fire marshal, statisfy State and local building codes and laws, and been issued a certificate of occupancy.

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

The proposed rule change will have no effect on revenue collections of state or local governmental units.

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

The proposed rule change may result in a minimal increase in cost to riverboat licensees that conduct their gaming operations in an onshore facility. In order to obtain a valid certificate of compliance issued by the Gaming Control Board for its facility, riverboat licensees may have to remedy any discrepancies to satisfy the applicable provisions of the National Fire Protection Association Life Safety Code and the International Building Code as adopted in the state of Louisiana, pass inspection with the state fire marshal, satisfy local and state building codes and laws, and be issued a certificate of occupancy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Michael Noel	Alan M. Boxberger
Chairman	Staff Director
2009#029	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of Motor Vehicles

Child Support Non-Payment Suspension
(LAC 55:III.114)

In accordance with the Administrative Procedures Act, R.S. 49:950, et seq., and pursuant to R.S. 32:432, the Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles, proposes to adopt a new section, §114, to provide for electronic reporting of an order of suspension for non-payment of child support from the Department of Children and Family Services. This proposed Rule is intended to be adopted and effective January 20, 2021.

Title 55
PUBLIC SAFETY
Part III. Office of Motor Vehicles
Chapter 1. Driver's License
§114. Suspension or Denial of Driving Privileges for Failure to Pay Child Support

A. The Office of Motor Vehicles will suspend the driver's license of any person that fails to pay child support upon receipt of a court order or upon notification from the Department of Children and Family Services.

B. Upon receipt of notification the Office of Motor Vehicles will add an indefinite suspension to the driver's license record unless the order of suspension issued by the court specifies a specific time period as provided in R.S. 9:315.32(A)(1)(b). In case where a specific time period has not been specified by the court, the driver's license will remain suspended until the Office of Motor Vehicles receives:

1. an order or partial compliance is received from the court and authorizes the issuance of a temporary operator license or a partial release compliance certificate is received from the Department of Children and Family Services.

C. The reinstatement fee established in R.S. 32:414(H) shall be paid prior to any reinstatement.

D. Electronic Reporting Requirements

1. The Department of Children and Family Services will electronically report orders of noncompliance, support order compliance and partial compliance releases to the Office of Motor Vehicles through secure file transfer. The file transfer shall be in the format provided by the Office of Technology Services.

2. The Office of Motor Vehicles through the Office of Technology Services will add the orders of noncompliance, support order compliance and partial compliance releases to the appropriate driver's license record.

AUTHORITY NOTE: Promulgated in accordance with Act 454 of the 2018 Regular Legislative Session and pursuant to R.S. 32:432.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 47:

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 formation/functioning, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in the R.S. 49:973.

Small Business Analysis

In compliance with Act 820, of the 2008 Regular Legislative Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.6.

Provider Impact Statement

As described in HCR 170 of the 2014 Regular Legislative Session, the impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted via the U.S. Mail to Stephen A. Quidd, Office of Legal Affairs, P.O. Box 66614, Baton Rouge, LA 70896. Written comments may also be hand-delivered to Stephen A. Quidd, Office of Legal Affairs 7979 Independence Boulevard, Suite 307, Baton Rouge, LA 70806. All written comments are required to be signed by the person submitting the comments, dated, and received on or before October 12, 2020 at 4:30 p.m.

Public Hearing

A public hearing will be scheduled pursuant to R.S. 49:953(A)(1)(a) if statutorily mandated.

Karen G. St. Germain
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Child Support Non-Payment Suspension

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

The proposed rule is expected to create workload efficiencies for both the Department of Children and Family Services (DCFS) and the Office of Motor Vehicles (OMV). The proposed rule allows DCFS to report failure to pay child support violations electronically to OMV. The failure to pay child support can trigger a driver's license suspension when reported to Office of Motor Vehicles (OMV). Currently, these child support violations are reported to OMV manually via mail. Electronic reporting will improve process efficiencies with both DCFS and OMV. However, the amount of any realized to OMV indeterminable.

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

The proposed rule has no effect on revenue collections of the State. The reinstatement fee is the only revenue generated related to the suspension of a driver's license for non-payment of child support. The proposed rule is not anticipated to impact the number of reinstatements. The proposed rule has no effect on the revenue collections of local governmental units.

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

Since suspension and reinstatement of driver's license for non-payment of child support shall remain the same, the proposed rule is not anticipated to have any estimated cost or economic benefit to persons affected. Small businesses and non-governmental groups shall not be affected by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no effect on competition and employment

Lt. Col. Jason Starnes	Christopher A. Keaton
Deputy Superintendent	Legislative Fiscal Officer
2009#047	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of Motor Vehicles

Rulemaking Petitions (LAC 55:III.Chapter 6)

In accordance with the Administrative Procedures Act, R.S. 49:950, et seq., specifically R.S. 49:953(C)(1), the Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles, proposes to adopt a Rule outlining the process for considering rulemaking petitions.

These sections are new and are intended to be adopted and effective January 20, 2021.

Title 55
PUBLIC SAFETY
Part III. Motor Vehicles

Chapter 6. Rulemaking Petitions

§601. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition the Office of Motor Vehicles for the adoption, amending or repeal of any rule, an interested person shall submit in writing the Department of Public Safety's petition for rulemaking form to Department of Public Safety, Office of Motor Vehicles, P.O. Box 64886, Baton Rouge, LA 70896, Attn: Rulemaking Petition, which contains the following basic information organized and captioned:

1. the petitioner's name and address;
2. the specific rulemaking agency to be petitioned within the Department of Public Safety as listed on the form;
3. a brief description of the facts or justification supporting the petitioner's request for the adoption of a rule or the amending of a rule that has already been adopted;
4. suggested specific language or language setting forth the substance of the proposed rule or rule change that is being requested, which may be attached to, or in addition to, the petition for rulemaking form;
5. a copy of each and every document upon which the petitioner bases the petitioner's request for a rule or a citation of the information and where it can be easily obtained for review by the rulemaking agency;
6. the petitioner's signature and date of signature.

C. The Department of Public Safety's petition for rulemaking form can be found on the official website of the Department of Public Safety, Office of Motor Vehicles.

AUTHORITY NOTE: Promulgated in accordance with Act 454 of the 2018 Regular Legislative Session and R.S. 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles LR 47:

§603. Consideration of a Rulemaking Petition

A. Upon receipt of a petition for rulemaking form, the OMV Commissioner shall forward the petition to his agency designee. The agency designee shall review the petition for completeness pursuant to the requirements listed in LAC 55: III:601. B. If the petition is found to be complete, the agency designee shall consider the petition.

B. Within 90 days of receipt of the petition, the OMV Commissioner or his agency designee shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

C. Whenever the OMV Commissioner or his agency designee determines that a public hearing should be held prior to the adoption of any rule or rule change, a notice of the meeting date, time and place will be published in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with Act 454 of the 2018 Regular Legislative Session and R.S. 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 47:

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 formation/functioning, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in the R.S. 49:973.

Small Business Analysis

In compliance with Act 820, of the 2008 Regular Legislative Session of the Louisiana Legislature, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses, as described in R.S. 49:965.6.

Provider Impact Statement

As described in HCR 170 of the 2014 Regular Legislative Session, the impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted via the U.S. Mail to Stephen A. Quidd, Department of Public Safety, Office of Legal Affairs, P.O. Box 66614, Baton Rouge, LA 70896. Written comments may also be hand-delivered to Stephen A. Quidd, Department of Public Safety, Office of Legal Affairs, 7979 Independence Boulevard, Baton Rouge, LA 70806, Suite 307. All written comments are required to be signed by the person submitting the comments, dated, and received on or before October 12, 2020 at 4:30 p.m.

Public Hearing

A public hearing will be scheduled pursuant to R.S. 49:953(A)(1)(a) if statutorily mandated.

Karen G. St. Germain
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Rulemaking Petitions

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

The proposed rule does not impact costs or savings to the state or local governmental units. The proposed rule codifies the current practices within Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles (OMV) for submission and consideration of rulemaking

petitions. In accordance with the provisions of Act 454 of the 2018 Regular Session, the proposed rule amends and reenacts R.S. 49:953(C)(1), which sets forth a process by which an interested person may petition the Office of Motor Vehicles for the adoption, amendment or repeal of any existing administrative rule.

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

The proposed rule will have no effect on revenue collections of state or local governmental units.

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

The proposed rule is not anticipated to impact costs or economic benefits for directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no effect on competition and employment.

Lt. Col. Jason Starnes	Christopher A. Keaton
Deputy Superintendent	Legislative Fiscal Officer
2009#048	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Office of Alcohol and Tobacco Control

CBD Product Public Safety Regulations
(LAC 55:VII.Chapter 6)

Under the authority of R.S. 3:1484(F) and in accordance with the provisions of the Administrative Procedure Act R.S. 49:950, et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to enact LAC 55:VII.601-619, relative to the regulation of industrial hemp-derived CBD products for consumption and topical use as defined under the provision of Act 344 of the 2020 Regular Session of the Louisiana Legislature.

The proposed enactment of the above-referenced Rule is offered under the authority delegated in R.S. 3:1484(F) to allow ATC the ability to properly permit, authorize, and regulate the sale and distribution of industrial hemp-derived CBD products.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Subpart 3. Cannabis
Chapter 61. CBD Products Public Safety Regulations

§6101. Clarification on Scope

A. As used in this Chapter, the term "industrial hemp-derived product or hemp derived product that contains CBD intended for consumption or topical use" does not include industrial hemp-derived products without CBD. The Office of Alcohol and Tobacco Control does not directly regulate industrial hemp-derived products that do not contain CBD.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6103. Definitions

A. For the purpose of this Chapter, the following terms are defined.

CBD Dealer—any person, who as a business, sells, offers for sale, solicit orders for the sale of, or distributes any industrial hemp-derived product or hemp derived product that contains CBD intended for consumption or topical use to the general public.

Industrial Hemp/Hemp—the plant *Cannabis Sativa L.* and any part of that plant including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with no more than the federally defined THC level for hemp.

Industrial Hemp Derived CBD Products—any industrial hemp derived products that contain CBD intended for consumption or topical use.

Remote Seller—a person or entity who offers any industrial hemp derived product or hemp derived product that contains CBD intended for consumption or topical use for sale at retail through transactions consummated electronically via digital application, catalog, or the internet to be delivered directly to a consumer in Louisiana.

a. For the purpose of this Chapter, each individually registered domain name owned or leased by or on behalf of a remote retailer shall be considered a place of business.

b. No person or entity shall be required to maintain a physical place of business in the state of Louisiana in order to sell industrial hemp derived CBD products at retail.

Retail Sale—the sale or any transaction in lieu of sale of products to the public for use or consumption but does not include the sale or any transaction in lieu of sale of products for resale.

State Plan—a plan required for approval by the United States Secretary of Agriculture to monitor and regulate the production of hemp.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6105. CBD Retail and Remote Seller Permits

A. The commissioner of the Office of Alcohol and Tobacco Control shall have the authority to issue annual CBD dealer permits which shall authorize the storage and retail sale of industrial hemp-derived CBD products to take place at each physical place of business.

B. Each person who sells or is about to engage in the business of selling at retail any industrial hemp-derived CBD product shall first apply for and obtain a permit for each place of business. The Office of Alcohol and Tobacco Control may issue the following permits to persons or entities meeting qualifications or criteria as listed:

1. CBD dealer retail permit may be issued to any person or legal entity, who as a business offer for retail sale or sale at retail of any industrial hemp derived CBD products for each physical place of business.

2. CBD remote seller permit may be issued to any person or legal entity who offers any industrial hemp derived CBD products for sale at retail, or for any transaction of products in lieu of a sale, through digital application, catalog, or the internet, that can be purchased and delivered directly to a consumer in Louisiana.

a. Prior to engaging in online retail sales of industrial hemp-derived CBD products intended for consumption or topical use, applicant shall be required to hold a valid and current CBD remote seller permit. Each

individually registered domain name owned or leased by or on behalf of a remote retailer shall be considered a place of business.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6107. CBD Annual Special Event Permit

A. For the purposes of this Chapter, a special event shall be defined as any event held at any location, other than a permitted place of business, where industrial hemp-derived CBD products are sold.

B. For such events, this office may issue an annual special event permit upon submission of an application for the same. This permit shall authorize the retail sale of industrial hemp-derived CBD products for such events during the duration of the permit's term.

C. Applicants for a CBD annual special event permit shall meet the following requirements:

1. applicant must hold a current and valid CBD retail dealer or remote seller permit;

2. annual special event permit shall be issued in conjunction and with the same duration term as applicant's CBD retail dealer or remote seller permit. Accordingly, annual CBD special event permits shall expire annually on March 31st and may be renewed annually in accordance with renewal of the other foregoing retail permits.

3. The cost of the annual CBD special event permit fee in the amount of $175 per year or any portion thereof. This cost shall not be prorated.

D. The CBD retail dealer shall notify the commissioner in writing of any special event the permittee will be conducting prior to the event.

1. Written notice must be submitted directly to the office of Alcohol and Tobacco Control at least one week prior to the event.

2. Written notice must include the date, time, and place of each special event.

3. All industrial hemp-derived CBD products must be sold or dispensed by the holder of the CBD special event permit or his employee, agent, or servant.

4. The CBD special event permit must be displayed on the premises of the event.

5. Failure to notify the commissioner shall be grounds for suspension or revocation of the permit.

E. No industrial hemp-derived CBD product intended for consumption or topical use shall be given away free of charge at a special event, even by a special event permit holder, unless authorized in writing by the Louisiana Office of Alcohol and Tobacco Control.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6109. Permit Fees

A. The commissioner shall collect an initial and annual licensure permit fee in the amount of $175 per year for each place of business.

1. Place of business shall mean each physical place of business or domain name.

B. Annual Fees

1. CBD dealer retail permit—$175 for each establishment or physical location.

2. CBD remote seller permit—$175 for each domain name, digital catalog, or internet site.

3. CBD annual special event permit—$175 for each establishment.

C. Any applicant that operates a physical place of business or storefront located in Louisiana and intends to operate an online store affiliated with the physical place of business shall only be required to obtain a CBD dealer retail permit.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6111. Expiration of Licenses

A. CBD Retail Dealer, CBD Remote Seller, and Annual CBD Special Event permits shall expire annually on March 31st of each year. To continue to engage in the retail sale of CBD products, permit holders shall renew their permit prior to the expiration date.

B. For a renewal application to be timely filed, the application and the appropriate fees must be received by the Office of Alcohol and Tobacco Control on or before the license expiration date.

C. Failure to timely file the renewal application will subject the licensed holder to suspension or revocation of the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6113. Submission of Application

A. All applications for CBD dealer permits shall be mailed or delivered to the commissioner in Baton Rouge, Louisiana, unless additional methods are made available by the commissioner. Upon receipt of an application, the commissioner shall stamp the day, month, and year received, and the commissioner may verify that the applicant does not owe the state or the political subdivision in which the business is located any delinquent taxes, penalties, or interest, excluding items under formal appeal pursuant to the applicable statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6115. Additional information for licenses by Partnership, Corporations, and Limited Liability Companies (LLCs)

A. In addition to completing an application for each place of business, any partnership, corporation, or limited liability company applying for a CBD retail or remote seller permit shall provide the written agreement (partnership) or certificate or corporate documents (corporations or LLCs) to the Office of Alcohol and Tobacco Control.

1. If the applicant is a partnership recognized by Louisiana law, or anyone is such a partnership with or financed by another, all members of such partnership, or all the persons furnishing the money shall possess the qualifications required of the applicant. The application shall name all partners or financial backers and furnish their social security numbers and proper addresses.

2. If the applicant is a corporation or limited liability company, all officers and directors and all stockholders or

members or persons who shall conduct or manage the business shall possess the qualifications required of an applicant and shall furnish their federal identification number, their Louisiana Department of Revenue business account number, their social security number, and their correct home address.

3. The corporation or limited liability company shall either be organized under the laws of the state of Louisiana or qualified to do business within the state of Louisiana.

B. This requirement is waived for any applicant(s) who also holds an alcohol and/or tobacco permit issued to the same location with the Office of Alcohol and Tobacco Control, provided the applicant includes the applicable license number(s) on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6117. Personal Nature of Permits; Return of Permits; Displaying of Permits

A. The following shall apply to all permits issued under this Chapter:

1. CBD dealer permits shall be considered a privilege and are not transferrable, assignable, or heritable.

2. The permit must be returned to the Office of Alcohol and Tobacco Control or surrendered to an agent of the commissioner within five days of permit closure, when the ownership of the business is transferred, or the business is terminated.

3. When the ownership of the business is transferred, the new owner shall be allowed to continue to operate using the transferor's permit until a new permit is issued or denied, only if the new owner notifies the Office of Alcohol and Tobacco Control of the transfer within five days of the transfer and applies for a new CBD dealer permit within 15 days of the transfer of ownership.

4. If the permit holder is a corporation or limited liability company, the permit holder shall notify the Office of Alcohol and Tobacco Control in its initial application and renewal applications of all officers, directors, managers, shareholders, members, or persons qualified to conduct or manage the business and the same shall meet the qualification requirements of the applicant.

B. The permit, in addition to any other permit required to be displayed, shall be posted in a conspicuous place on the licensed premises, so as to be easily seen and read by the public. No other signs or notices, except those required by state or federal law, shall be required to be displayed by the CBD dealer.

1. The failure of a dealer to publicly display his or her permit shall be grounds for the withholding, suspension, or revocation of the CBD dealer permit.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6119. Qualifications

A. Applicants for CBD dealer permits shall:

1. have not been adjudged by the commissioner, or convicted by a court of violating any of the provisions of this Chapter. If the applicant has been convicted, the granting of or renewal of a permit shall be within the discretion of the commissioner;

2. not owe the state or the local governmental subdivisions in which the application is made any delinquent taxes, penalties, or interest, excluding items under formal appeal pursuant to applicable statutes;

3. timely file returns and pay taxes as required by R.S. 47:1693. Failure to comply will result in revocation or suspension of a permit until the returns have been filed and the taxes are paid.

a. No permit shall be suspended for taxes which have been properly protested or appealed by the retailer pursuant to R.S. 47:1565 or 1567.

E. All licenses and persons required to be qualified pursuant to the provision of this Chapter shall have a continuing duty to inform the commissioner of any action which they believe would constitute a violation of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6121. Misstatement or Suppression of Fact

A. Any misstatement or suppression of fact in an application for an initial permit, application for renewal of a permit, special event permit, or any accompanying affidavit to the Office of Alcohol and Tobacco Control is grounds for the denial, withholding, suspension, or revocation of a permit.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6123. Records, Inspections, and Examination; Employee Records

A. The commissioner or his or her agent or employee may inspect any place of business where industrial hemp-derived CBD products are offered for retail sale. Commissioner or his or her agent or employee may examine, at all reasonable hours, the books, records, and other documents of all CBD dealer permit holders.

1. No person shall refuse to allow, on demand, the commissioner or his or her agent or employee to make a full inspection of a place of business where industrial hemp-derived CBD products are offered for retail sale nor shall any person refuse to allow, on demand, the commissioner or his or her agent or employee to examine and audit the books and records of any business where industrial hemp-derived CBD products are offered for retail sale nor shall any person in any way hinder or prevent such an inspection or audit.

B. Any refusal by a CBD dealer permit to allow the commissioner or his or her agent or employee to inspect the permitted place of business or to examine and audit the books and records of the permitted business as provided within this section is grounds for the suspension of a permit, in addition to other penalties in this chapter.

C. The applicant is responsible for any employee working under the applicant's license and CBD dealer permit holder shall maintain a record containing the name, date of hire and termination (if applicable), last four digits of social security number, and date of birth for every employee.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6125. Age Verification Requirement for Online Sales

A. Before a remote seller mails, ships, or otherwise delivers hemp-derived CBD products of any kind in connection with a sale, the seller must verify the consumer's age through electronic or written communication.

1. Sellers shall maintain records related to age verification related to all orders fulfilled by mailing or shipping.

2. Sellers accepting purchase orders for delivery sales may request that prospective consumers provide email addresses.

B. No retailer may sell or deliver hemp-derived CBD products of any kind in a retail establishment to any person through an unattended or self-service checkout counter, vending machine or mechanical devices.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6127. Prohibition on Sales to Minors

A. No person holding a CBD dealer permit and no servant, agent, or employee of the permittee shall sell any industrial hemp-derived CBD product to any person under the age of 18 years of age.

B. To ensure that no industrial hemp-derived CBD product is sold to a person under the age of 18years of age, a CBD dealer permit holder and their servants, agents, and employees may require all persons attempting to purchase CBD products at retail to produce for inspection either:

1. a valid, current, Louisiana driver's license which contains a photograph of the person presenting the driver's license;

2. a valid, current, driver's license of another state which contains a photograph of the person and birth date of the person submitting the driver's license;

3. a valid, current, special identification card issued by the state of Louisiana pursuant to R.S. 40:1321 containing a photograph of the person submitting the identification card;

4. a valid, current, passport or visa issued by the federal government or another country or nation, that contains a permanently attached photograph of the person and the date of birth of the person submitting the passport or visa;

5. a valid, current, military or federal identification card issued by the federal government containing a photograph of the person and date of birth of the person submitting the identification card;

6. a valid, current, special identification card of another state which contains a photograph of the person and date of birth of the person submitting the identification card;

7. any digitized identification approved by the commissioner may be accepted by CBD retailers. CBD dealers may choose to accept digitized identification or they may still require a physical identification when checking identification. CBD dealers whom the Agency has required to utilize scanners shall still be required to request and scan a physical identification and may not accept digitized identification. Digitized identification may be accepted by establishments provided that all employees have been properly trained prior to acceptance in accordance with the requirements of LAC 55:VII.401.D.

C. Each form of identification listed above must on its face establish the age of the person as eighteen years or older, and there must be no reason to doubt the authenticity or correctness of the identification. No form of identification mentioned above shall be accepted as proof of age if it is expired, defaced, mutilated, or altered. If the state identification card or lawful identification submitted is a duplicate, the person shall submit additional information which contains the name, date of birth, and picture of the person. A duplicated driver's license shall be considered lawful identification for the purposes of this Paragraph, and a person shall not be required to submit additional information containing the name, date of birth, and picture of the person. In addition, an educational institution identification card, check cashing identification card, or employee identification card shall not be considered as lawful identification for the purposes of this Paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6129. Registrations and Label Approval with Louisiana Department of Health

A. CBD dealer permit holders may not possess, store, display, offer for sale, or sell CBD products which have not been registered with and had their labels approved by the Louisiana Department of Health, if the same are required to be registered and approved by the Louisiana Department of Health.

1. If required, hemp-derived products must be registered with the Louisiana Department of Health in accordance with the State Food, Drug, and Cosmetic Law (R.S. 40:601 et seq.); and

2. Must be labeled in accordance with the State Food, Drug, and Cosmetic Law (R.S. 40:601et seq.) and approved by the Louisiana Department of Health. The label shall have:

a. the following words printed clearly on its label: "This product has not been evaluated by the Food and Drug Administration and is not intended to diagnose, treat, cure, or prevent any disease," unless approved by the United States Food and Drug Administration and;

b. a scannable bar code, QR code, or web address linked to a document or website that contains a certificate of analysis as required by La. R.S. 3:1482(D).

B. Any industrial hemp-derived product or hemp seed incapable of germination that has been approved by the United States Food and Drug Administration and does not contain any amount of cannabidiol shall not fall under the regulations of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6131. Sale of Prohibited Items

A. No CBD dealer shall sell or offer for sale at retail any industrial hemp-derived product that:

1. is derived from any source that is not hemp;

a. for the purposes of this Chapter, industrial hemp-derived CBD products are produced from hemp grown by a licensee authorized to grow hemp by the United States Department of Agriculture or under an approved state plan pursuant to the Agriculture Improvement Act of 2018, P.L. 115-334, or under an authorized state pilot program pursuant to the Agriculture Act of 2014, P.L. 113-79.

2. contains a tetrahydrocannabinol (THC) concentration of more than the federally defined level for hemp;

3. is intended for inhalation; except for hemp rolling paper;

4. is an alcoholic beverage containing CBD or hemp;

5. is marketed as a dietary supplement, unless approved by the United States Food and Drug Administration;

6. is a food product or beverage containing CBD or hemp unless the United States Food and Drug Administration approves CBD and/or hemp as a food additive;

7. contains medical claim, unless approved by the United States Food and Drug Administrative.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6133. CBD Owner Training

A. CBD dealer permittees must complete the free ATC online CBD education training course within 30 days after receiving their CBD dealer permit. All individuals completing CBD education training shall receive a certificate of completion evidencing their training which shall be valid for two years.

B. CBD dealer permittee employees who may be called upon to sell or serve industrial hemp-derived CBD products to consumers at retail may voluntarily complete the ATC online CBD education training. Individuals who maintain a current, valid and non-expired certificate of CBD education training and the permittee they are employed by may receive a warning in lieu of penalties for a first offense violation of a CBD/hemp product sale to a minor.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6135. Procedure for Withholding, Suspending, or Revoking Permit

A. The procedure for the suspension or revocation of permits shall be substantially as follows.

1. The commissioner shall have periodic examinations made of the business of all persons holding permits. If a violation of the law as observed, the commissioner may give the permittee a written warning. If the permittee has been previously warned or if the violation is of a sufficiently serious nature, the commissioner may instruct an agent or employee of the commissioner to prepare and file, upon information and belief based upon the facts in hand, a petition for suspension or revocation of the permit, setting forth the facts and circumstances of the violation, and shall thereupon summon the permittee to appear and show cause why the permit should not be suspended or revoked.

2. In determining cases involving he suspension or revocation of permits, if the commissioner finds that the violation is of a minor nature, or that there are extenuating circumstances, or that there are reasonable grounds to expect that the permittee will not again violate any of the provisions of this Chapter, the commissioner may suspend the permit. If the permittee has previously been fined or had a permit suspended or revoked, or if the violation is flagrant or serious, the commissioner may revoke the permit or permits.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6137. Administrative Hearings

A. Whenever the commissioner is to hold a hearing pursuant to the provisions of this Chapter, the commissioner shall issue a written summons or notice thereof to the applicant or permittee, directing the permittee to show cause why their business permit should not be suspended or revoked. The notice or summons shall enumerate the cause or causes alleged for suspending or revoking the permit. All notices or summonses shall be either delivered to the applicant or permittee in person or sent by certified mail to the applicant or permittee and directed to him or her at the mailing address as given in permittee's last application for the permit. When so addressed and mailed, notices or summonses shall be conclusively presumed to have been received by the applicant or permittee.

1. Permittee may request in writing, notices, and summons to be delivered via electronic email to the email address provided by the applicant. If requested and delivered to the email provided by applicant, notices or summons shall be conclusively presumed to have been received by the applicant or permittee.

B.1. Hearings may be held by the commissioner or by any person designated and authorized by the commissioner. If the hearing is to be held before any person designated by the commissioner, that person shall take an oath for the faithful performance of his or her duties. The oath may be administered by anyone qualified by law to administer oaths in this state.

2. The commissioner, or the person designated to hold a hearing, may administer oaths, issue subpoenas for the attendance of witness and the production of books, papers, accounts, and documents, and examine witnesses and receive testimony at the hearing.

C. If a permittee or applicant who has been notified of a hearing does not appear, the hearing may proceed without the permittee and the commissioner may consider and dispose of the case, but in all cases the commissioner, upon application or *ex propria motu*, may grant continuances from time to time. If the continuance be granted to a fixed future date by written consent or in the presence of the permittee, applicant, or his counsel, no further notice of the hearing date need be given. In all other cases the same notices of hearing as in original hearings shall be given.

D. Hearings by the commissioner shall be held either at the agency headquarters in Baton Rouge, the agency's New Orleans office, in the parish in which the licensed premises in questions is located, or at another location designated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6139. Participation in Hearing by Video Conference

A. To the extent practicable, the commissioner may authorize the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing pursuant to the following requirements:

1. Prior to authorizing the use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing, the commissioner shall provide the permittee with written notice of his intent to do so. The notice shall be sent by certified mail to the permittee at the address of his place of business as given in his application for the permit and shall be sent not less than ten nor more than 30 calendar days from the schedule hearing date. When so addressed and mailed, the notice shall be conclusively presumed to have been received by the permittee.

2. Any party objecting to the commissioner's authorization of the use of teleconference, video link, or other visual remote communications technology to conduct all or any portion of any authorized hearing shall provide the commissioner with written notification of the objection at least five days prior to the scheduled hearing date. Upon receipt of any objection, the commissioner shall not allow the use of teleconference, video link, or other visual remote communications technology to conduct any portion of the hearing for which a proper objection was raised. Failure of a permittee to object in writing at least five calendar days prior to the scheduled hearing date shall conclusively constitute a waiver of any objections.

3. Any use of teleconference, video link, or other visual remote communications technology for the conducting of any hearing shall be done in real-time.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6141. Administrative Penalties

A. Any person who violates any of the provisions of this Chapter or the provisions of R.S. 3:1483 or who alters, forges, or counterfeits, or uses without authority any permit, license, or other document provided for in this Chapter, who operates without a permit, or who fails to collect or to timely pay the assessment and fees due or assessed pursuant to this Chapter or R.S. 3:1483 shall be subject, effective January 1,2020, in addition to any unpaid assessments, late fees, or collection costs, to the following offenses, wherein each day on which a violation occurs shall constitute a separate offense:

1. on a first offense, the offender shall be fined not more than $300;

2. on the second offense, which occurs within two years of the first offense, the offender shall be fined not more than $1,000;

3. on a third or subsequent offense, which occurs within two years of the first offense, the offender shall be fined not less than $500 but not more than $3000.

B. In addition to the penalties provided for by R.S. 3:1484 and above, any licensee who violates any of the provisions of this chapter shall be subject to having his or her permit suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§6143. No Donations or Free CBD Products

A. No industrial hemp-derived CBD product shall be donated or given away free of charge outside of the confines of a CBD dealer's permitted place of business, nor shall the same be sold through vending machines, unless authorized in writing by the Louisiana Office of Alcohol and Tobacco Control.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:1484.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

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 has a negligible impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to R. Danielle Barringer, Office of Alcohol and Tobacco Control, 7979 Independence Blvd., Suite 101, Baton Rouge, Louisiana 70806, no later than Friday, October 23, 2020. She is responsible for responding to inquiries regarding this proposed Rule.

Ernest P. Legier Jr.
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Child Support Non-Payment Suspension

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

The proposed rules will likely increase expenditures in FY 21 and subsequent FYs by an indeterminable amount associated with regulatory activities for the sale of cannabidiol products for the LA Dept. of Revenue, Office of Alcohol and Tobacco Control (ATC) that will be offset in part or in whole by revenues derived from regulation of such products (see Part II below). Aside from general regulatory activities such permit application review, approval permit approval, and enforcement activities, ATC may realize additional costs associated with administrative hearings regarding the levy of penalties and appeals of administrative judgments in district courts. those

Furthermore, the proposed rule changes may increase expenditures for the LA Dept. of Health (LDH) associated with the approval of CBD product labels, which will similarly be offset in part or in whole fees by charged to register such labels (see Part II).

The proposed rules provide the framework governing the sale of CBD products by LDR, including regulatory scope; definitions; permit applications, types, applications, renewals, and requirements for firms and their employees selling CBD products; inspection of facilities and files; and enforcement activities such as penalties and license suspensions and renewals.

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

The proposed rules will increase SGR collections for ATC and LDH in FY 21 and subsequent FYs by an indeterminable amount. Included in the proposed rules are fees for CBD Dealer Retail Permits ($175 annually), CBD Remote Seller Permits ($175 annually), and CBD Annual Special Event Permits ($175 annually). Because permitting of such firms is a new activity, this represents new revenue for ATC. Because it is unknown how many firms will engage in the sale of CBD products, as well as the types of permits they will obtain, the revenue increase is indeterminable. Furthermore, the proposed rules include financial penalties up to $3,000 for firms committing violations while selling CBD products. Revenue from financial penalties is speculative, as the extent and number of violations firms may commit are unknown.

The proposed rules will increase SGR collections for LDH by an indeterminable amount, as firms are required to register product labels with the department and pay a $50 per-product registration fee. Because this is a new activity, it will generate additional revenue for LDH. However, because the number of firms registering labels and the number of labels each will register are similarly unknown, the exact revenue increase is indeterminable.

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

The proposed rules will require firms to pay permit and label registration fees that are indeterminable in the aggregate, as it is unknown how many firms will sell CBD products and to what extent they will sell them. Any fees paid by firms will be equivalent to those outlined in Part II above. Furthermore, the proposed rules include financial penalties up to $3,000 for firms committing violations while selling CBD products. The extent of payments derived from financial penalties is speculative, as the extent and number of violations firms may commit are unknown.

The proposed rule outline requirements for firms selling CBD products. To the extent firms do not already comply with the rules being promulgated, they may incur expenses associated with achieving compliance. The extent of the expenditures firms may incur with achieving compliance is indeterminable and dependent upon the number of firms who are non-compliant, as well the respective cost of remediating their non-compliance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not affect competition and employment

Danielle Barringer	Christopher A. Keaton
Attorney	Legislative Fiscal Officer
2009#050	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Office of Alcohol and Tobacco Control

Direct Delivery of Alcohol Public Safety Regulations
(LAC 55:VII.Chapter 8)

Under the authority of R.S. 26:153, 26:307(E), 308(I), and in accordance with the provisions of the Administrative Procedure Act. R.S. 49:950, et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, proposes to enact LAC 55:VII.801-807, relative to the regulation of direct delivery of alcoholic beverages within the state of Louisiana.

The proposed enactment of the above-referenced rule is offered under the authority delegated in R.S. 26:307(E) and 26:308(I) to allow ATC the ability to properly permit, authorize, and regulate the sale and distribution of alcoholic beverages. The proposed Rule will address direct delivery matters not otherwise addressed by existing law or regulations.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Chapter 8. Direct Delivery of Alcohol Public Safety Regulations
§801. General Direct Delivery Requirements

A. Prior to any alcohol retailer or third party alcohol delivery service engaging in the delivery of alcoholic beverages, same shall obtain an alcoholic beverage delivery permit from the Commissioner of the Office of Alcohol and Tobacco Control and shall adhere to the following requirements.

1. Only alcoholic beverages intended for personal consumption and delivered in a manufacturer sealed container may be offered for delivery. *Manufacturer sealed container* as used in this chapter shall mean the original sealed container that is filled with the alcoholic beverage at the permitted facility by the manufacturer as defined in R.S. 26:2(12) and 241(10). The delivery of an *open alcoholic beverage container* as defined by R.S. 32:300 is prohibited.

2. Delivery shall be permitted only in those areas where the sale of alcoholic beverages is permitted. Delivery shall be prohibited in any area where it has been prohibited by a referendum vote or the local governing authority.

3. Delivery by a retailer shall not extend past the boundaries of the parish where the retailer's permitted establishment is located and shall be made only to a residential or commercial address. Third party delivery

radius shall be determined by the parish population. For any parish having a population of less than 100,000 according to the latest federal decennial census, no alcoholic beverages shall be delivered more than 25 miles from the place of purchase. For any parish having a population of greater than 100,000 according to the latest federal decennial census, no alcoholic beverages shall be delivered more than 10 miles from the place of purchase.

4. Orders for alcohol delivery of any type may only be accepted and processed if the permitted premises receiving the order has actual physical possession of the alcoholic beverage being ordered on the physical premises at the time the order is accepted and can fulfilled the order from stock on-hand.

5. The alcoholic beverages of all deliveries which are refused by a third party or incapable of being delivered for any reason shall be returned to the place of purchase.

6. Alcohol beverage delivery permit holders must verify that a consumer placing an order for alcohol delivery is of legal drinking age.

7. Alcoholic beverages shall not be delivered:

a. to an address on the campus of any elementary school, secondary school, university, college, technical college, or institute;

b. to any public playground or building used primarily as a church, synagogue, mosque, or public library;

c. outside of the hour that the retailer's physical premises are open to the public;

d. without verifying that the recipient is not visibly intoxicated;

e. without obtaining the signature of the recipient verifying that the receipt of the delivery of alcohol and their age.

8. Alcoholic beverage delivery permit holders shall keep and retain a record of all deliveries of alcoholic beverages for a period of three years from the date of delivery and shall make such records available to the Commissioner of Alcohol and Tobacco Control, and her agents and assigns, upon request. The record of each delivery shall include:

a. the retail dealers name, address, and permit number;

b. the name of the person who placed the order and the date, time, and method of order;

c. the name of the employee or delivery agent making the delivery and the date, time, and address of the delivery;

d. the type, brand, and quantity of each alcoholic beverage delivered; and

e. the name, date of birth, and signature of the person that received the delivery.

9. Parishes and municipalities may require and issue local direct delivery of alcohol permits similar to those issued by the Commissioner of Alcohol and Tobacco Control.

10. All persons delivering alcoholic beverages under an alcoholic beverage permit shall be 21 years of age or older, be the permittee or their employee or agents for which the permittee is required to file an Internal Revenue Service Form W-2 or 1099.

11. Persons delivering alcoholic beverages under an alcoholic beverage delivery permit shall refuse delivery and return the alcoholic beverages to the place of purchase if:

a. the recipient does not produce a valid and current form of identification as identified in Paragraph G.5 of this Section;

b. there is reason to doubt the authenticity or correctness of the recipient's identification;

c. the recipient refuses to sign for the receipt of the delivery; or

d. the recipient is intoxicated.

12. If an alcohol retailer's alcohol permit is revoked, suspended, or lapsed, then that retailer's alcoholic beverage delivery permit shall also be considered to be revoked, suspended, or lapsed and delivery of alcohol beverages shall immediately cease for that particular retailer until permit is deemed valid and current.

13. Third party delivery company or the third party platform shall maintain a commercial general liability insurance policy with a liquor liability endorsement with a minimum coverage amount of $1,000,000 for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the retail dealer and Commissioner of Alcohol and Tobacco Control upon request.

14. The permittee shall require all delivery drivers to maintain vehicle general liability insurance on any and all vehicles permittee or its agent may use for deliveries as required by State law for the duration of the alcoholic beverage delivery permit and they shall provide proof of coverage to the Commissioner of the Office of Alcohol and Tobacco Control upon request.

15. Class B or class AR retailers who engage the services of third party alcohol delivery service to deliver alcohol for them, must notify the Commissioner of the Office of Alcohol and Tobacco Control in writing within 10 days of executing or terminating an agreement with a third party alcohol delivery service to deliver alcohol by providing a copy of the agreement and/or termination notice directly to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§803. Package Store Retail Alcohol Delivery Permit

A. Retailers holding a valid class B retail liquor permit, retailers holding a valid class C retail liquor permit, and retailers holding a valid retail liquor permit that allows for off-premises consumption shall be allowed to apply for, obtain, and maintain a class P retail alcohol delivery permit pursuant to this particular regulation (§803) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter:

B. The Commissioner of Alcohol and Tobacco shall collect the initial and annual licensure fee for class P retail alcohol delivery permits in the amount of $250 and same shall expire and be renewable at the same time as the holder's alcohol permit.

C. Each and every order for the delivery of alcoholic beverages received by a class P retail alcohol delivery permit holder shall include food with each order.

D. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received. All transactions can be processed, assembled, packaged, and fulfilled by the permittee, a W-2 employee of the permittee, a third party, a third party platform, or an authorized agent.

E. Deliveries to consumers shall only be made by the permittee, a W-2 employee of the permittee, a third party, a third party platform, or an authorized agent.

F. Alcoholic beverages shall not be delivered without verifying the identity and age of the recipient by reading a valid state-issued photo identification card, valid military identification card, valid passport of the person, or through the use of a real-time electronic age verification device or application shall be approved by the Commissioner of Alcohol and Tobacco Control.

G. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

H. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

1. the permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;

2. the permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee, or a W-2 employee of the permittee, reviews, and accepts or rejects each order;

3. the permittee retains the independence to determine which alcoholic beverages are made available through electronic means and which alcoholic beverages are made available for delivery to the consumer either at their licensed physical premises itself or at another address designated by the consumer;

4. the permittee independently sets the price of alcoholic beverages being offered for delivery;

5. any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and the receipt;

6. the permittee, or a W-2 employee of the permittee, shall processes at the physical premises that accepted the orders and payments initiated by a consumer;

7. the relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, or joint venture of the other party under any circumstances or for any purposes;

8. the third party shall not deal, handle, sell, offer for sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§805. Restaurant Retail Alcohol Delivery Permit

A. Retailers holding a class AR retail liquor permit shall be allowed to apply for and obtain a class R retail alcohol delivery permit pursuant to this particular regulation (§805) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this Chapter.

B. The Commissioner of Alcohol and Tobacco shall collect an initial and annual licensure fee for class R retail alcohol delivery permits in the amount of $250 and same shall expire and be renewable at the same time as the holder's alcohol permit.

C. Only malt beverages, sparkling wine, and still wine, as defined in R.S. 26:2 and 241 may be offered for delivery. No alcohol beverages shall be offered for curbside pickup unless otherwise authorized under law, a separate rule, or guidance. All deliveries containing alcoholic beverages shall also include food. Alcohol and food purchased from a class AR retailer for delivery shall be included in its gross average monthly sales figures for purposes ensuring that an AR retailer meets its 50 percent food or food items requirement under R.S. 26:73(C)(1)(a). However, pursuant to R.S. 26:73(C)(2), sparkling or still wine delivered by the bottle in conjunction with food shall not be considered an alcoholic beverage when determining gross revenue for purposes of R.S. 26:73(C)(1)(a).

D. No alcohol shall be delivered more than 10 miles from the place of purchased for any parish having a population greater than 100,000 according to the latest federal decennial census. Additionally, no alcohol shall be delivered more than 25 miles from the place of purchase for any parish having a population of less than 100,000 according to the latest federal decennial census.

E. All alcohol delivery transactions initiated by a consumer shall be processed, assembled, packaged, and fulfilled at the retailer's permitted physical premises wherein the order was received by the permittee or a W-2 employee of the permittee.

F. Deliveries to consumers shall be made by the permittee or agents for which the permittee is required to file an Internal Revenue Service Form W-2 or 1099.

G. At the time of delivery of alcoholic beverages, the permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the Commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following:

1. verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;

2. reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;

3. storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned.

H. Notwithstanding any law, rule, or regulation to the contrary, the permittee may use electronic means to market, receive, and process orders for alcohol products.

I. The permittee may market, receive, and process orders for alcohol products using electronic means owned, operated, and maintained by a third party, provided that:

1. the permittee maintains ultimate control and responsibility over the sales transaction, the transfer of the

physical possession of the alcoholic beverages, and the collection and remittance of all applicable state and local taxes;

2. the permittee retains the sole discretion to determine whether to accept and complete an order or reject it and the permittee or agents for which the retailer is required to file an Internal Revenue Service Form W-2 or 1099, shall review and accept or reject each order;

3. the permittee retains the independence to determine which alcoholic beverages ae made available through electronic means and which alcoholic beverages are made available for delivery to the consumer at the licensed physical premises itself or at another address designated by the consumer;

4. the permittee independently sets the price of alcoholic beverages being offered for delivery;

5. any credit or debit card information provided by a consumer to the third party for the purpose of transacting a purchase is automatically directed to the permittee such that the transaction takes place between the consumer and the permittee and the permittee appears as the retail dealer at the time of purchase and a receipt;

6. the permittee, or a W-2 employee of the permittee, processes at the physical premises that accepted the order, all payments initiated by a consumer and assembles, packages, and fulfills each order at the same physical premises;

7. deliveries to consumers shall be made by the permittee or agents for which the retailer is required to file an Internal Revenue Service Form W-2 or 1099.

8. the relationship between the permittee and the third party shall be one of independent contractors and neither party shall be deemed the employee, or joint venture of the other party under any circumstances or for any purposes;

9. the third party shall not deal, handle, sell, offer or sale, or possess for sale alcoholic beverages or process payments for the sale of alcoholic beverages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§807. Third Party Alcohol Delivery Service Permit

A. Third party alcohol delivery service companies desiring to deliver alcohol to consumers in connection with a delivery agreement with a retail dealer possessing valid class AR or B retail permits shall first apply for and obtain a class T third party alcohol delivery permit pursuant to this particular regulation (§807) and they shall adhere to the following requirements in addition to the general requirements otherwise enumerated in this chapter:

B. The Commissioner of Alcohol and Tobacco shall collect an initial and annual fee for third party alcohol delivery service permits in the amount of $1,500 and same shall expire and be renewable annually from date of first issuance.

C. Third party company or platform may enter into an alcoholic beverage service delivery agreements with retail dealers possessing valid class AR or B retail permits with the Office of Alcohol and Tobacco Control that provide for the use by the retailer of an internet or mobile application or similar technology platform to facilitate the sale of alcoholic beverages for delivery to consumers for personal consumption and the third party alcohol delivery service permittee may deliver the alcoholic beverages so facilitated to the consumer.

D. Only malt beverages, sparkling wine, and still wine, as defined in R.S. 26:2 and 241 may be offered for delivery by third party delivery companies from the licensed premises of a restaurant Class AR permit holder. Alcoholic beverages as defined by R.S. 26:2(1) and 26:241(1)(a) may be offered for delivery by a third party delivery permittee from the licensed premises of package house-class B permit holder. No alcoholic beverages shall be offered for curbside pickup unless otherwise authorized under the law or a separate rule or guidance. All delivery orders containing alcoholic beverage shall also contain food.

E. No alcohol shall be delivered more than 10 miles from the place of purchased for any parish having a population greater than 100,000 according to the latest federal decennial census. Additionally, no alcohol shall be delivered more than 25 miles from the place of purchase for any parish having a population of less than 100,000 according to the latest federal decennial census.

F. No alcohol shall be purchased or sold by the third party delivery service. The third party delivery service is prohibited from charging a markup price for alcohol sales, however third party delivery service may charge a reasonable delivery fee. All transactions must be completed by the retail dealer.

G. Third party company or platform shall be licensed to do business in the State of Louisiana, use their own employees or agents for which the third party delivery company or the third party platform is required to file an Internal Revenue Service Form W-2 or 1099 for delivery, be able to monitor the routes of their employees during deliveries, and conduct screenings and background checks of all employees that will deliver alcoholic beverages.

H. Third party company or platform shall maintain a general liability insurance policy with a liquor liability endorsement in an amount no less than $1,000,000 per occurrence for the duration of every agreement maintained with a retail dealer and they shall provide proof of coverage to every retail dealer with whom they have an agreement and notice to the retail dealer and the Commissioner of the Office of Alcohol and Tobacco Control if the coverage lapses or is cancelled.

I. The retail dealer shall manage and control the sale of alcoholic beverages and shall accept or reject all orders placed for alcoholic beverages through the third party delivery service permittee's internet or mobile application or similar technology, collect and remit all applicable state and local taxes, determine the alcoholic beverages offered for sale through the third party delivery service permittee's internet or mobile application or similar technology, and determine the price at which alcoholic beverages are offered for sale or sold through the third party delivery service permittee's internet or mobile application or similar technology.

1. Any credit or debit card information provided by a consumer to the third party permittee for the purpose of transacting a purchase with a retail permittee shall automatically be directed to the retail permittee to ensure that the retail permittee is:

a. the retail dealer at the time of purchase;

b. is shown on the receipt; and

c. receives the payment from the consumer.

2. The retail dealer may pay a third party delivery company or third party platform a fee for its service.

J. The third party alcohol delivery service permittee may not markup the price of alcoholic beverages and may not sell or resell alcoholic beverages. The third party delivery company or platform may charge retailer dealers a reasonable delivery fee for the orders delivered by the third party and may act as an agent for the retail dealer in the collection of payments from the sale of alcoholic beverages, but the full amount of each order must be handled in a manner that gives the retail dealer control over the ultimate receipt of the payment from the consumer.

1. At the time of delivery, alcoholic beverages shall be priced at the same or equal price as if offered for sale by the retailer directly from its licensed location.

2. Alcoholic beverages' prices advertised higher than those offered directly by retailers and/or receipts of alcohol beverages for sale listing prices higher than that offered directly by retailers through third party companies or platforms shall be deemed an impermissible mark-up.

K. The third party alcohol delivery service permittee may receive orders and accept payment via the internet or through a mobile application or similar technology.

L. At the time of delivery of alcoholic beverages, the third party alcohol delivery service permittee shall obtain the recipient's signature and verify the age of the recipient through the use of an electronic age verification device or combination of devices that shall be approved by the Commissioner of Alcohol and Tobacco Control. Such devices shall be capable of all of the following.

1. verifying proof of age through technology of a magnetic card reader or an alternative technology capable of verifying proof of age;

2. reading a valid state-issued driver's license, a valid state-issued identification card, a valid military identification card, or a valid passport;

3. storing the recipient's name, age, date of birth, the expiration date of the identification, and the date and time that the identification was scanned;

M. A third party alcohol delivery service permittee who delivers alcoholic beverages, but fails to comply with the provisions of Subsection I immediately above §801.L and any other applicable rules contained in this chapter, shall be vicariously liable for damages incurred as a result of the failure to comply.

N. Third party alcohol delivery service permittees must maintain and provide the Commissioner of Alcohol and Tobacco Control with a list of retailers they have entered into agreements with within 60 days of receiving their permit and at each renewal. An up-to-date version of the retailer list shall be made available upon demand by the Commissioner and her agents and assigns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:307(E).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

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 has a negligible impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Small Business Analysis

Pursuant to R.S. 49:965.6, methods for reduction of the impact on small business, as defined in the Regulatory Flexibility Act, have been considered when creating this proposed Rule.

This proposed Rule is not anticipated to have an adverse impact on small businesses; therefore, a Small Business Economic Impact Statement has not been prepared.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to R. Danielle Barringer, Office of Alcohol and Tobacco Control, 7979 Independence Blvd., Suite 101, Baton Rouge, LA 70806, no later than Friday, October 23, 2020. She is responsible for responding to inquiries regarding this proposed Rule.

Ernest P. Legier, Jr.
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Direct Delivery of Alcohol Public Safety Regulations

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

The proposed rules may result in additional marginal expenditures in FY 21 and subsequent FYs by an indeterminable amount associated with the regulation of alcohol delivery, such as permit review and recordkeeping, for the LA Dept. of Revenue, Office of Alcohol and Tobacco Control (ATC) that will be offset in part or in whole by revenues derived from regulation activities (see Part II below). The proposed rules outline the types of permits for alcohol delivery, as well as the requirements of permittees delivering alcohol.

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

The proposed rules will increase SGR collections in FY 21 and subsequent FYs by an indeterminable amount. Included in the proposed rules are fees for Package Store Retail Alcohol Delivery Permits ($250 annually), Restaurant Retail Alcohol Delivery Permits ($250 annually), and Third-Party Alcohol Delivery Service Permits ($1,500 annually). Because permitting of such firms is a new activity, this represents new revenue for ATC. Because it is unknown how many firms will engage in alcohol delivery, as well as the types of permits they will obtain, the revenue increase is indeterminable.

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

The proposed rules will require firms to pay permit fees that are indeterminable in the aggregate, as it is unknown how many firms engage in alcohol delivery and which permits they will acquire. Any fees paid by firms will be equivalent to those outlined in Part II above. Furthermore, the proposed rules outline requirements for firms delivering alcohol, such as recordkeeping, age verification, maintenance of insurance, and limitations on the types of alcohol eligible for delivery. To the extent firms do not already comply with the rules being promulgated, they may incur expenses associated with achieving compliance. The extent of the expenditures firms may incur with achieving compliance is indeterminable and dependent upon the number of firms who are non-compliant, as well the respective cost of remediating their non-compliance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Danielle Barringer	Christopher A. Keaton
Attorney	Legislative Fiscal Officer
2009#049	Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development
Office of the Secretary

Transportation Network Companies
(LAC 70:IX.Chapter 50)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in Act 286 of the 2019 Regular Session, that the Department of Transportation and Development, Office of the Secretary, proposes to adopt Part IX, Subpart B, Chapter 50, of Title 70 entitled "Transportation Network Companies." This proposed rule establishes a classification of carriers and provides for department regulation of Transportation Network Companies, drivers, and local governments. The proposed rule further establishes a permit procedure for Transportation Network Companies (TNC), TNC and driver responsibilities; prohibitions on local governments; provides requirements and procedures for an audit of a company by the department; authorizes the department to inspect records held by the company; and authorizes a per trip fee for intrastate prearranged rides.

Title 70
TRANSPORTATION AND DEVELOPMENT
Part IX. Transportation
Subpart B. Network

Chapter 50. Transportation Network Companies

§5001. Authority

A. The purpose of this regulation is to provide uniform rules, regulations and procedures to govern Transportation Network Companies (TNC), its drivers and vehicles throughout the state in order to protect and promote the safety and welfare of the residents of Louisiana.

B. Nothing in these rules shall exempt any Transportation Network Company or participating driver from complying with all applicable laws; and municipal and parochial ordinances relating to the ownership, registration, and operation of automobiles in this state including those provided for Title 45 Part C of the Transportation Network Company Motor Vehicle Responsibility Law as provided for in R.S. 45:201.1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5003. Application and Scope

A. The following rules and regulations are promulgated in accordance and under the authority of the Secretary of the Department of Transportation and Development as afforded and designated by Act 286, Regular Session 2019, R.S. 48:2191, et seq., R.S. 45:201.1 et. seq., and R.S. 36:504.

B. These rules shall apply to Transportation Network Companies, its drivers and local governments.

C. Any previous rules promulgated in association or relative to Transportation Network Companies are repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5005. Limitations of Scope

A. Nothing in this Section shall be construed to prohibit the state from maintaining, enforcing, prescribing, or continuing in effect any law or regulation regarding the sale, distribution, repair, or service of vehicles pursuant to Title 32 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5007. Definitions

A. The following terms, as used in this Chapter, shall have the meanings ascribed to them in this Section, except where a different meaning is expressly stated or clearly indicated by context.

Bodily Injury—claims for general and special damages for personal injury arising under Civil Code Article 2315.

Department—the Louisiana Department of Transportation and Development.

Digital Network—any online-enabled application, software, website, or system offered or utilized by a transportation network company that enables the

prearrangement of rides with transportation network company drivers.

Gross Trip Fare—the base fare plus any time or distance charges, excluding any additional charges such as airport or venue fees.

Intrastate Prearranged Ride—any prearranged ride, as provided for in this Section, originating within the jurisdiction of the local governmental subdivision.

Local Governmental Subdivision—any parish or municipality as defined in Article VI, Section 44(1) of the Constitution of Louisiana.

Personal Vehicle—a vehicle that is used by a transportation network company driver and is owned, leased, or otherwise authorized for use by the transportation network company driver.

a. A personal vehicle is not a vehicle subject to Parts A and B of the Motor Carrier law as provided for in R.S. 45:161 et seq., or engaged solely in interstate commerce.

Prearranged Ride—the provision of transportation by a driver to a rider that commences when a driver accepts a ride requested by a person through a digital network controlled by a transportation network company, continues during the driver transporting a requesting rider, and ends when the last requesting rider departs from the personal vehicle.

a. A prearranged ride does not include shared expense van pool services, as defined pursuant to R.S. 45:162(18), shared expense car pool services, as defined pursuant to R.S. 45:162(1), or transportation provided using a vehicle subject to Part A or B of the Motor Carrier law as provided for in R.S. 45:161 et seq. or engaged solely in interstate commerce.

Pre-Trip Acceptance Period—any period of time during which a driver is logged on to the transportation network company's digital network and is available to receive transportation requests, but is not engaged in an intrastate prearranged ride as defined in Paragraph 5 of this Section.

Transportation Network Company or *Company*—

a. a person, whether natural or juridical, that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides;

b. or a person, whether natural or juridical, that provides a technology platform to a transportation network company rider that enables the transportation network company rider to schedule an intrastate prearranged ride.

Transportation Network Company Driver or *Driver*—

a. a person who receives connections to potential passengers; and

b. related services from a transportation network company in exchange for payment of a fee to the transportation network company; and

c. who uses a personal vehicle to offer or provide a prearranged ride to persons upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

Transportation Network Company Rider or *Rider*—a person who uses a transportation network company's digital network to connect with a transportation network driver who provides intrastate prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider.

Transportation Network Company Vehicle or *Vehicle*—has the same meaning as personal vehicle as provided for in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5009. Transportation Network Company Permits

A. A person shall not operate a company in the state of Louisiana without first submitting and obtaining an approved permit from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5011. Permit Application

A. Permit applications shall be submitted to the Office of the Secretary, of the agency at least 30 days prior to planned operations within the state of Louisiana.

B. Upon filing an application, a company shall be required to provide the department with proof of the following items:

1. certificate of insurance verifying compliance with R.S. 45:201.6 and listing the department as a certificate holder;

2. service of process. A company shall maintain an agent for service of process in the state of Louisiana;

3. nondiscrimination policies; accessibility:

a. the company shall provide a nondiscrimination policy in compliance with all applicable laws regarding nondiscrimination against drivers, riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity and shall inform drivers of such policy;

b. the company shall comply with all applicable non-discrimination laws with respect to contracting with drivers;

c. a policy indicating drivers shall comply with all applicable nondiscrimination laws;

d. a policy indicating drivers shall comply with all applicable laws relating to transporting service animals;

4. zero tolerance policy addressing the use of drugs or alcohol while a driver is providing prearranged rides or is logged into the company's digital network, regardless of whether the driver is providing prearranged rides:

a. the company shall provide notice of this policy on its website as well as procedures to report a rider's complaint about a driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the prearranged ride;

b. upon receipt of a rider's complaint alleging a violation of the zero tolerance policy, the company shall immediately suspend the alleged driver's ability to accept trip requests through the company's digital network and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation;

c. records relevant to this policy shall be maintained for two years from the date of the complaint;

5. fare transparency the company must provide proof that one of the two options are provided to riders:

a. if a fare is collected from a rider, the company discloses to the rider the fare or fare calculation method

located on its website or within the online-enabled technology application service prior to the start of the prearranged ride;

b. if the fare is not disclosed to the rider prior to the beginning of the prearranged ride, the rider shall have the option to receive an estimated fare before the start of the prearranged ride;

6. the company shall have a policy and the infrastructure in place to perform the necessary actions:

a. the company's digital network displays a picture of the driver and the license plate number of the motor vehicle used for providing the prearranged ride before the rider enters the driver's vehicle;

b. at the request of a rider, a driver shall present his physical license or digitized driver's license to the rider prior to the start of each prearranged ride;

c. transmit an electronic receipt to the rider on behalf of the driver which include all of the following:

i. the origin and destination of the trip;

ii. the duration and distance of the trip;

iii. the total fare paid for the trip.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5013. Transportation Network Company Responsibilities

A. TNC shall require drivers to operate and maintain the vehicle in accordance with all motor vehicle laws of the state of Louisiana including but not limited to R.S. 32:1301 et. seq., R.S. 32:318, R.S. 32:327, R.S. 45:201.1 et seq.

B. Before an individual is authorized to accept trip requests through a transportation network company's digital network, the company shall require the driver and the drivers' vehicle to comply with all laws of the state of Louisiana including all motor vehicle laws pertaining to vehicles, inspections, and criminal laws.

1. The individual shall submit an application to the company, which includes information regarding his

a. address;

b. age;

c. driver's license;

d. motor vehicle registration;

e. insurance;

f. state vehicle inspection; and

g. any other information required by the company or imposed by the department.

2. The company or a third party shall conduct a local and national criminal background check for each applicant that includes the following:

a. a multi-state and multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation of any records through a primary source search;

b. a search of the national sex offender public website maintained by the United States Department of Justice.

3. The company or a third party shall obtain and review a driving history research report for each applicant.

C. The company or a third party shall conduct the background check and driving history research report set forth in Paragraphs A.2 and 3 of this Section at least once every two years.

D. The company shall not authorize an individual to act as a driver if the individual's initial driving report reveals the individual received more than three moving violations within the three-year period prior to applying to the company; or any subsequent annual driving history reveals more than three moving violations within a three-year period.

E. The company shall not authorize an individual to act as a driver if the individual's initial background check or any subsequent background check reveals the individual:

1. has had more than one of the following violations within the three-year period prior to applying to the company:

a. flight from an officer or aggravated flight from an officer as provided for in R.S. 14:108.1;

b. reckless operation of a vehicle as provided for in R.S. 14:99;

c. operating a vehicle while under suspension for certain prior offenses as provided for in R.S. 14:98.8;

2. has been convicted, within the past seven years, of:

a. any enumerated felony as provided for in Title 14 of the Louisiana Revised Statutes of 1950, comprised of R.S. 14:1 through 601;

b. operating a vehicle while intoxicated as provided for in R.S. 14:98 through 98.4;

c. hit and run driving as provided for in R.S. 14:100;

d. any crime of violence as defined in R.S. 14:2(B);

3. is listed as an offender in the national sex offender public website maintained by the United States Department of Justice.

F. Companies are responsible for contacting and remitting fees to the proper agency or municipality in accordance with R.S. 48:2204

G. Before a driver is initially allowed to accept a request for a prearranged ride, the transportation network company shall maintain the requirements for insurance as provided for in R.S. 45:201.6 and shall disclose in writing to each transportation network company driver:

1. the insurance coverage, including the types of coverage and the limits for each coverage, which the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network;

2. that the transportation network company driver's own automobile insurance policy may or may not provide any coverage while the driver is logged on to the transportation network company's digital network during the pre-trip acceptance period or is engaged in a prearranged ride, depending on its terms;

3. to the extent that any agreement between a transportation network company and a driver or rider, or between a driver and a rider addresses liability, any provision that, in advance, excludes or limits the liability of one party for causing bodily injury to the other party is null;

4. any coverage that in advanced has been waived, excluded or limits liability of the company to the driver as provided for in R.S. 45:201.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5015. Permit Renewal

A. Companies shall file an application for renewal annually with the Office of the Secretary of the Department of Transportation and Development.

1. A permit is considered valid until June 30, following the date of issue.

2. Renewal applications shall be submitted annually by July 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5017. Suspension and Revocation of Permits

A. Permits may be suspended for a period of time specified by the department, or until the company is in compliance with the rules of the agency.

B. If the department finds a company non-compliant with the principles of public policy or any of the following, after notice to the TNC, the agency may revoke or suspend a company's permit to operate within the state:

1. failure to maintain the requirements of a permit;

2. failure to conduct or cooperate with an investigation of a complaint;

3. failure to comply with the requirements of an audit;

4. any other statute or rule violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5019. Driver Responsibilities; Prohibitions

A. The driver for a TNC shall possess a valid driver's license and valid registration to operate a personal vehicle.

B. The driver shall possess a valid state approved vehicle inspection sticker to operate a motor vehicle used to provide prearranged rides.

C. A driver shall not be required to register the vehicle that the driver uses to provide prearranged rides as a commercial motor vehicle or a for hire vehicle.

D. A company or a driver shall not be considered a common carrier, contract carrier, or motor carrier, and shall not provide taxi or for hire vehicle service.

E. A driver shall not accept a trip for compensation other than a trip arranged through a company's digital network.

1. A dispute arising in this state involving the company, or a driver operating under the provisions of this Chapter, shall not be governed by the laws of another jurisdiction and shall not be resolved outside of the state, unless agreed to by all parties in writing after the dispute has arisen.

2. *Dispute* shall include but is not limited to a dispute involving liability arising from an alleged act or omission, a dispute involving interpretation of contractual terms or provisions, and a determination of rights, status, or other legal relations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5021. Records Retention

A. The department shall have the right to audit and inspect the records that the company is required to maintain, including:

1. individual trip records for at least three years from the date each trip was provided;

2. individual records of drivers for at least three years after the date which a driver's relationship with the company has ended;

3. the company shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a rider's complaint is received by the company;

4. complaints, specifically, but not limited to fares, discrimination, operating the vehicle while under the influence of a substance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5023. Audit Procedures; Confidentiality of Records

A. The results of any audit will be reported to the Louisiana Legislative Auditor as required and in accordance with the DOTD's Internal Audit Charter and the guidelines established by the Louisiana Legislative Auditor.

1. Upon receiving notification of audit, the company shall provide the requested documents within 45 days.

2. Audit Notification

a. Prior to the audit the company shall receive notice of documents and records to provide to the department.

b. The audit shall be conducted to include the required records pertaining to 50 separate and distinct transportation network drivers.

c. If after initial review, the department has a reasonable basis to conclude the transportation network company is not in compliance with the requirement of this section, the department may conduct a supplemental audit of records with an additional selection of drivers.

d. The audit shall take place annually, unless the department has grounds to believe that additional audits are warranted, at a mutually agreed location in the state of Louisiana.

e. Any record furnished to the department may exclude information that would identify specific drivers or riders, unless the identity of a driver or rider is determined by the department to be relevant to the audit.

B. The governing body of a local governmental subdivision may request from the department a report on the results of the audit performed by the agency pursuant to Subsection A of this Section.

C. Failure to comply with Paragraphs A of this Section may result in the company's permit to operate within the state being suspended or revoked.

D. The Department of Revenue shall have the sole audit authority with respect to fees remitted by a company to a local governmental subdivision and the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5025. Complaints and Investigation

A. Companies shall provide the department with a report of the number of safety complaints against drivers including type and region by parish or city annually.

1. Companies shall provide the department with any and all complaints regardless of the type of complaint, if requested by the department.

B. In response to a specific complaint against any driver or company, the department is authorized to inspect any and all records held by the company that are deemed necessary by the department to investigate and resolve the complaint beyond the companies' initial investigation.

1. Companies shall make available to the department all documents, persons, records, and digital information requested, to investigate any complaint reported to the department relative to the company or behavior of a driver.

2. Failure to comply with an investigation or provide all requested records may result in the company's permit to operate within the state being suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5027. Local Rules and Regulations

A. At least 30 days prior, local governmental subdivision shall provide written notice to the agency and each company permitted by the department in accordance with R.S. 48:2193,

1. of an initial hearing,

2. reading, or

3. consideration of an ordinance imposing a fee pursuant to R.S. 48:2204.

B. A local governmental subdivision shall also provide written notice within ten days of the passage of any ordinance imposing a fee.

C. A fee imposed pursuant to R.S. 48:2204 shall not go into effect until the first day of the month that is at least 30 days after passage of the ordinance imposing the fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

§5029. Local Governmental Prohibitions

A. A local governmental subdivision shall not do any of the following:

1. impose a tax on, or require a license for, a company, a driver, or a vehicle if such tax or license relates to providing prearranged rides, except as provided in R.S. 48:2204 or Subsection D of this Section;

2. require a company or a driver to obtain a business license or any other type of similar authorization to operate within the jurisdiction;

3. subject a company, a driver, or a vehicle to any rate, entry, operation, or other requirement of the governing authority, except as provided in R.S. 48:2204 or Subsection D of this Section;

4. prohibit a driver with corresponding driver's license and license plate of any state from obtaining a Louisiana vehicle inspection, regardless of the state from which the license and license plate are issued.

B. With oversight from the department, local authorities shall have the option to work in concert with companies for the purpose of coordination of pick-up and drop-off zones regarding airports, large events and special events.

C. Local authorities have 90 days prior to the event to request a meeting of coordination from the department.

1. For the purposes of this Section, a *large event* means any event designated as SEAR-1, under the federal special event assessment rating system, or as a national special security event.

2. For the purposes of this Section *special events* means any event with an expected attendance of 25,000 people or more, occurring in that jurisdiction.

D. The provisions of this Section shall not prohibit:

1. an airport from charging pick-up fees for the use of the airport's facilities or designating locations for staging, pick-up, and other similar operations at the airport:

a. an airport pick-up fee is not a local fee subject to the provisions of R.S. 48:2204;

2. a police department of a local governmental subdivision from contracting with a company operating in the local governmental subdivision's jurisdiction for the purpose of coordination of pick-up and drop-off zones associated with large events occurring in that jurisdiction;

3. a contract under this Section:

a. shall not exclude any company holding a permit under R.S. 48:2193 from providing services at the event.

b. shall have comparable terms for each company, taxi cabs, limousines, or any other for-hire vehicles providing services.

c. shall not preclude the police department of a local governmental subdivision from enforcing traffic laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:2205.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, LR 46:

Family Impact Statement

Adoption of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability, and autonomy. Specifically:

1. The adoption of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The adoption of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The adoption of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The adoption of this proposed Rule will have no known or foreseeable effect on the family earnings and family budget.

5. The adoption of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The adoption of this proposed Rule will have no known or foreseeable effect on the ability of the family or local government to perform this function.

Poverty Impact Statement

The adoption of this proposed Rule should not have any known or foreseeable impact on child, individual, or family poverty in relation to individual or community asset development as defined by R.S. 49:973. Specifically,

1. The adoption of this proposed Rule will have no known or foreseeable effect on household income, assets, and financial security.

2. The adoption of this proposed Rule will have no known or foreseeable effect on early childhood development and preschool through postsecondary education development.

3. The adoption of this proposed Rule will have no known or foreseeable effect on employment and workforce development.

4. The adoption of this proposed Rule will have no known or foreseeable effect on taxes and tax credits.

5. The adoption of this proposed Rule will have no known or foreseeable effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The adoption of this proposed Rule on small businesses, as defined in the Regulatory Flexibility Act, has been considered. The proposed Rule is not expected to have a significant adverse 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 the proposed statutes while minimizing the adverse impact of the Rule on small businesses.

Provider Impact Statement

The adoption of this proposed rule change does not have any known or foreseeable impact on a provider as defined by House Concurrent Resolution No. 170 of the 2014 Regular Session of the Louisiana State Legislature. Specifically:

1. The adoption of this proposed Rule change does not have any known or foreseeable impact on the staffing level requirements or qualifications required to provide the same level of service.

2. The adoption of this proposed Rule change does not have any known or foreseeable impact on the total direct and indirect effect on the cost to a provider to provide the same levels of service.

3. The adoption of this proposed Rule change does not have any known or foreseeable impact on the overall effect on the ability of a provider to provide the same level of service.

Interested Persons Statement

All interested persons so desiring shall submit oral or written data, views, comments, or arguments no later than 20 days from the date of publication of this notice of intent to Archana Cadge, Attorney, Legal Division, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, LA 70804-9245.

Shawn D. Wilson, Ph.D.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Transportation Network Companies

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

There are no estimated implementation costs or savings to state or local governmental units associated with adoption of the proposed rule. The Department of Transportation and Development, Office of the Secretary, proposes to adopt Subpart B Part IX, Chapter 50, of Title 70 entitled "Transportation Network Companies," to allow for Rules regarding Transportation Network Companies (TNC) in accordance with Act 286 of the 2019 Regular Session of the Louisiana Legislature. Act 286 provided for uniform laws, rules and regulations to govern the operations of TNCs, their drivers and vehicles throughout the state of Louisiana.

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

There is an anticipated increase in revenue collections of local governmental units as a result of the proposed rule. Implementation of Act 268 will result in an indeterminable increase in Local Funds revenue as a result of a per-trip fee up to 1% of the gross trip fare for each intrastate prearranged ride. The potential revenue will accrue to the local governing authority. The potential gross trip fares are not known; therefore, the potential revenue impact is indeterminate.

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

Transportation Network Companies (TNC) will be required to acquire a permit from DOTD before operating a company in the state of Louisiana and to comply with certain requirements and responsibilities regarding monitoring of its drivers' criminal backgrounds and insurance coverage. These activities may result in a marginal workload impact for private business. In accordance with local ordinance, a TNC may be required to remit fees of up to 1% of the gross trip fare for each intrastate prearranged ride to the local governing authority.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of the proposed rule.

Shawn Wilson, PhD	Alan M. Boxberger
Secretary	Staff Director
2009#031	Legislative Fiscal Office

NOTICE OF INTENT

Department of Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System

DROP Program (LAC 58:I.2713)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes amendment of a provision in Chapter 27 of Part I of LAC Title 58. The proposed Rule change is required to comply with changes in federal law made by the Secure Act, which became law in December of 2019. The Act changed the time when a Required Minimum Distribution ("RMD") must be made from Deferred Option Retirement Plan ("DROP") accounts of LASERS retirees. The age was moved from age 70 1/2 to age 72. Section 2713 must be amended to conform to that change. The proposed Rule change complies with and is enabled by R.S. 11:515.

Title 58
RETIREMENT
Part I. Louisiana State Employees' Retirement System
Chapter 27. DROP Program
Subchapter C. Withdrawal
§2713. Time for Disbursement

A. - B. …

C. When a retiree reaches age 72, mandatory annual distributions shall begin in accordance with IRS regulations.

The amount of the distributions will be recalculated annually. The mandatory distribution is based on the retiree's age and DROP account balance using the table above.

D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 25:2466 (December 1999), LR 29:1121 (July 2003), LR 30:2079 (September 2004), LR 32:1070 (June 2006), LR 35:2476 (November 2009), LR 46:

Family Impact Statement

The proposed Rule repeal is not anticipated to have an impact on family formation, stability, or autonomy as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Small Business Statement

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in R.S. 49:978.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as defined by HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments on the proposed changes until 4:30 p.m. October 10, 2020 to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804.

Cindy Rougeou
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: DROP Program

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

There are no expected implementation costs or savings to state or local governmental units as a result of this proposed rule change.

The proposed Rule makes a change to Chapter 27 of Title 58, Part I of the Louisiana Administrative Code applicable to Louisiana State Employees' Retirement System (LASERS). The existing Deferred Retirement Option Plan (DROP) rules are being updated to reflect changes to Required Minimum Distributions (RMD) made by the SECURE Act, which was recently passed by Congress and changes the RMD age from 70 1/2 to age 72.

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

Implementation of the proposed change will have no effect on revenue collections of state or local governmental units.

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

Implementation of the proposed change will allow retirees to delay receiving required minimum distributions from their retirement account by a year and half, which may result in the retiree having a lower income tax liability during that period,

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule has no known effect on competition and employment.

Cindy Rougeou
Executive Director
2009#043

Alan M. Boxberger
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Health
Board of Optometry Examiners

Board Nominations and Voting

The Louisiana State Board of Optometry Examiners ("LSBOE") announces that nominations and voting for three individuals to be submitted to the Governor of the state of Louisiana for the appointment of one person to the Board of Governors of the LSBOE will be taken by mail-in ballot in lieu of in-person voting in light of the continuing state of emergency due to the Covid-19 pandemic. Mail-in ballots will be reviewed and counted at the annual meeting of the LSBOE to be held at a date, time, and location (either physical or virtual) to be specified by the LSBOE. Interested persons who wish to vote for nominees to be submitted to the Governor of the State of Louisiana for appointment should submit a mail-in ballot consisting of three nominees per instructions to be mailed to each optometrist licensed under the laws of the State of Louisiana at the address currently shown in his or her current registration as per R.S. 37:1042. Each optometrist submitting a mail-in ballot must designate and vote for three nominees for submission to the Governor of the state of Louisiana, and any ballot indicating votes for more or less than three nominees shall be null and void. Mail-in ballots should be postmarked on or before October 24, 2020. Names submitted pursuant to a mail-in ballot will constitute both a nomination and a vote for submission of the named individuals to the Governor of the state of Louisiana for appointment of one member of the Louisiana State Board of Optometry Examiners. It is not necessary to be a member of the Optometry Association of Louisiana to be nominated. The LSBOE may be contacted at (318) 335-2989.

Dr. James Sandefur, O.D.
Secretary

2009#022

POTPOURRI

Department of Health
Board of Pharmacy

Notice of Public Hearing—Substantive Change
to Notice of Intent for Proposed Rule
Automated Medication Systems
(LAC 46:LIII.Chapter 12)

The Board of Pharmacy published a Notice of Intent to amend its rules relative to automated medication systems in the April 20, 2020 edition of the *Louisiana Register*. Pursuant to the board's consideration of comments and testimony received during the May 29. 2020 public hearing, the board proposes to amend the original proposed rule in three sections. Within §1203, the Board proposes to add an exemption to the requirement for pharmacies hosting an automated medication system within the building housing that pharmacy to obtain a registration. The current rule requires such a registration and the registration is exempt from fees. The proposed revision will exempt the pharmacy from the requirement to obtain a registration but will require compliance with the operational standards cited in the chapter. Within §1213 relative to recordkeeping, the board proposes to revise the requirement for such records to document the name of the pharmacy technician or pharmacist stocking or restocking the medications in the automated medication system, to require the name of the person performing such procedures; that person could be someone other than a pharmacy technician or pharmacist. Within §1217 relative to stocking and restocking of automated medication systems, the board proposes to allow the pharmacist-in-charge to delegate that task to any licensed personnel without the necessity of direct pharmacist supervision. Such personnel could include other licensed healthcare providers; however, the pharmacist-in-charge remains accountable for the accurate stocking and restocking of medications in the system.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 12. Automated Medication Systems
§1203. Automated Medication System Registration

A. - A.5. …

B. Eligibility for Registration; Exemption

1. - 2. …

3. A pharmacy intending to supply medications for use within an AMS which is placed within the building housing that pharmacy shall not be required to obtain an AMS registration; however, the pharmacist-in-charge of the pharmacy shall be responsible for compliance with the operational standards in this Chapter.

C. - G.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:1271 (June 2000) effective July 1, 2000, amended LR 38:1235 (May 2012), amended by the Department of Health, Board of Pharmacy, LR 46:

§1213. Records

A. - A.3.e. …

f. identification of the person stocking or restocking the medications in the system; and

g. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:1271 (June 2000), effective July 1, 2000, amended LR 40:2256 (November 2014), effective January 1, 2015, amended by the Department of Health, Board of Pharmacy, LR 46:

§1217. Stocking and Restocking

A. …

B. When the pharmacy employs electronic product verification procedures as described within this Section, the stocking and restocking of medications and devices within an automated medication system may be performed by other licensed personnel approved by the pharmacist-in-charge without the necessity of direct pharmacist supervision.

B.1. - B.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 26:1271 (June 2000), effective July 1, 2000, amended LR 41:1488 (August 2015), amended by the Department of Health, Board of Pharmacy, LR 46:

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to Malcolm J Broussard, Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendment.

Public Hearing

A public hearing to solicit comments and testimony on the proposed revisions to the original Notice of Intent is scheduled for 9 a.m. on Monday, October 26, 2020. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. noon that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

Malcolm J Broussard
Executive Director

2009#008

POTPOURRI

Department of Health
Board of Pharmacy

Notice of Public Hearing
Substantive Change to Notice of Intent for Proposed Rule
Prescription Monitoring Program (LAC 46:LIII.29019)

The Board of Pharmacy published a Notice of Intent to amend its rules relative to the prescription monitoring program in the April 20, 2020 edition of the Louisiana Register. Pursuant to the board's consideration of comments and testimony received during the May 29, 2020 public hearing, the board proposes to amend the definition of the term *drug of concern*. The original proposed rule would have added nine new drugs to the two drugs listed in the current rule. The proposed amendment will remove seven of the nine drugs originally proposed for addition to that definition: (1) elbasvir/grazoprevir, (2) glecaprevir/pibrentasvir, (3) ledipasvir/sofosbuvir, (4) ombitasvir/paretaprevir/ritonavir/dasabuvir, (5) sofosbuvir, (6) sofosbuvir/velpatasvir, and (7) sofosbuvir velpatasvir/voxilaprevir; and further, the proposed amendment will retain the two drugs (1) promethazine when present in oral liquid formulations and (2) gabapentin.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 29. Prescription Monitoring Program
§2901. Definitions

A. As used in this Chapter, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise.

* * *

Drugs of Concern–drugs other than controlled substances as defined by rule whose use requires tracking for public health purposes or which demonstrate a potential for abuse, including any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters, ethers, isomers, and salts of isomers [whenever the existence of such salts, esters, ethers, isomers, and salts of isomers is possible within the specific chemical designation]:

a. butalbital when in combination with at least 325 milligrams of acetaminophen per dosage unit.

b. naloxone.

c. promethazine when present in oral liquid formulation.

d. gabapentin

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1011.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1345 (July 2007), amended LR 36:755 (April 2010), effective September 1, 2010, amended by LR 39:314 (February 2013), amended LR 40:1096 (June 2014), amended LR 41:684 (April 2015), amended by the Department of Health, Board of Pharmacy, LR 45:42 (January 2019), amended LR 46:

Public Comments

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative by personal delivery to Malcolm J Broussard, Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, LA 70809-1700. He is responsible for responding to inquiries regarding the proposed Rule amendment.

Public Hearing

A public hearing to solicit comments and testimony on the proposed Rule amendment is scheduled for 9 a.m. on Monday, October 26, 2020. During the hearing, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 p.m. noon that same day. To request reasonable accommodations for persons with disabilities, please call the board office at 225.925.6496.

Malcolm J Broussard
Executive Director

2009#018

POTPOURRI

Department of Health
Bureau of Health Services Financing

2021 First Quarter Hospital Stabilization Assessment

In compliance with House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees to establish hospital assessment fees and related matters (*Louisiana Register*, Volume 42, Volume 11).

House Concurrent Resolution 2 of the 2020 First Extraordinary Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy and collect an assessment for each assessed hospital.

The Department of Health shall calculate, levy and collect a hospital stabilization assessment in accordance with HCR 2 for the quarter July 1, 2020 through September 30, 2020. The quarterly assessment amount to all hospitals will be $28,414,358 which amounts to 0.25 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Dr. Courtney N. Phillips
Secretary

2009#060

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
John Glassell Jr., et al	Roanoke	L	LA Irrig Mill Co	001	17854
Shoreline Exploration, Inc.	Lower Mud Lake	L	Randolph Fawvor	001	75563
William Lagnion	South Thornwell	L	vua; LaCassane	002	219419

Richard P. Ieyoub
Commissioner

2009#032

POTPOURRI

Department of Natural Resources
Office of Conservation

Public Hearing (Docket No. ENV 2020-01)

Notice is hereby given that the Commissioner of Conservation will conduct a hearing at 6:00 p.m., Thursday, October 22, 2020, via internet video conference in accordance with the certification of inability to meet in person due to COVID-19 public health emergency for the Office of Conservation public hearings dated August 19, 2020. The internet video conference access information can be found at the following web link: http://www.dnr.louisiana.gov/index.cfm/page/135 .

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Defiance Energy Services, LLC, 415 Texas Street, Suite 400, Shreveport, Louisiana 71101. 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&P Waste) fluids located on Hwy 371 in Section 20, Township 13 North, Range 9 West in Red River Parish.

The application is available for inspection by contacting Mr. Stephen Olivier, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North 3rd Street, Baton Rouge, Louisiana. Copies of the application will be available for review at the Red River Parish Police Jury located at 615 East Carroll Street, Coushatta, Louisiana and the Red River Parish Public Library located at 410 East Carroll Street, Coushatta, Louisiana in accordance with each locations COVID-19 policies. In addition, an electronic copy of the application will be available for review at the following web link: http://www.dnr.louisiana.gov/index.cfm/page/135. All application copies shall be available for review no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Olivier at (225) 342-7394.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments must be received no later than 4:00 p.m., Thursday, November 5, 2020, 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 2020-01
Commercial Facility Well Application
Red River Parish

Richard P. Ieyoub
Commissioner

2009#023

POTPOURRI

Department of Revenue
Office of Alcohol and Tobacco Control

Public Hearing—Change to Proposed Rule
Vapor Products Public Safety Regulations
(LAC 55:VII.Chapter 32)

The Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, published a Notice of Intent to enact LAC 55:VII.3201-3215, relative to the to the regulation of alternative nicotine and vapor products within the state of Louisiana, in the May 2020 edition of the *Louisiana Register*. At this time the Office of Alcohol and Tobacco Control would like amend the above mentioned notice.

Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Subpart 2. Tobacco
Chapter 32. Alternative Nicotine and Vapor Products Public Safety Regulations

§3201. Definitions

A. As used in this Chapter, the following terms have the meaning ascribed to them in this Section, unless the context clearly indicates otherwise.

* * *

Wholesale Dealer—a dealer whose principal business is that of a wholesaler, who sells cigarettes, cigars, other tobacco products, vapor products, or alternative nicotine products to retail dealers for the purpose of resale, who is a bona fide wholesaler, and 50 percent of whose total tobacco, vapor, and alternative nicotine sales are to retail stores other than its own or those of its subsidiaries or parent companies within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services 50 or more cigarette vending machines in Louisiana other than his own, and a Louisiana dealer who was affixing cigarette and tobacco stamps as January 1, 1974. If any person is engaged in the business of making sales at both wholesale and retail, *wholesaler* shall apply only to the wholesale portion of the business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3209. Manufacturer Authorization

A. - C. …

D. Authorization forms will be valid for a period of one year. Applicants will have to apply for authorization annually, prior to December 31st.

E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

§3213. Age Verification

A. For all online sales permit holders must perform an age verification process through an independent, third party age verification service that compares information from public records to the personal information entered by the purchaser during the ordering process that establishes the person is of legal age or older.

B. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 46:

Public Hearing

In accordance with R.S. 49:968(H)(2), a public hearing will be held on Friday, October 30, 2020 at 10:30 a.m. at the Office of Alcohol and Tobacco Control, 7979 Independence Blvd. Baton Rouge, LA 70806.

Any individual that needs special assistance in order to attend or speak at this public hearing should notify R. Danielle Barringer in writing at the Office of Alcohol and Tobacco Control, 7979 Independence Blvd., Suite 101, Baton Rouge, LA 70806 or by email at Danielle.barringer@atc.la.gov or by telephone at (225)925-4018. Request for special assistance must be received no later than 4:30pm on Friday, October 23, 2020.

Any questions should be directed to R. Danielle Barringer at (225) 925-4018.

Ernest Legier
Commissioner

2009#033

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