

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

**Nursing Facilities - Standards for Payment
Level of Care Pathways
(LAC 50:II.10156)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:II.10156 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 Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing level of care pathways in order to clarify the provisions of the June 20, 2013 Rule which amended the provisions governing the standards for payment for nursing facilities to clarify level of care determinations (*Louisiana Register*, Volume 41, Number 7). The department now proposes to amend the provisions governing level of care pathways in order to further clarify these provisions.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Medical Assistance Program**

Subpart 3. Standards for Payment

Chapter 101. Standards for Payment for Nursing Facilities

Subchapter G. Levels of Care

§10156. Level of Care Pathways

A. - C.4. ...

D. Activities of Daily Living Pathway

1. - 3.e. ...

f. toileting—includes getting on and off the toilet, wiping, arranging clothing, etc.;

D.3.g. - E.1.c. ...

2. In order for an individual to be approved under the Cognitive Performance Pathway, the individual must have any one of the conditions noted below:

a. - b. ...

c. have a memory problem and is sometimes understood (e.g., the individual's ability is limited to making concrete requests);

d. have a short term memory problem and is rarely or never understood;

e. be moderately impaired in daily decision making (e.g., the individual's decisions are consistently poor or unsafe, cues or supervision is required at all times) and the individual is usually understood (e.g., the individual has

difficulty finding words or finishing thoughts and prompting may be required);

f. be moderately impaired in daily decision making (e.g., the individual's decisions are consistently poor or unsafe, cues or supervision is required at all times) and the individual is sometimes understood, (e.g., his/her ability is limited to making concrete requests);

g. be moderately impaired in daily decision making (e.g., the individual's decisions are consistently poor or unsafe, cues or supervision is required at all times) and the individual is rarely or never understood;

h. be minimally impaired in daily decision making (e.g., the individual has some difficulty in new situations or his/her decisions are poor and requires cues and supervision in specific situations only) and the individual is sometimes understood (e.g., the individual's ability is limited to making concrete requests); or

i. be minimally impaired in daily decision making (e.g., the individual has some difficulty in new situations or his/her decisions are poor, cues and supervision are required in specific situations only) and the individual is rarely or never understood.

j. - m. Repealed.

F. Physician Involvement Pathway

1. ...
2. The following are investigated for this pathway:
 - a. physician visits occurring during the 14 day look back period(excluding emergency room exams); and
 - b. physician orders issued during the 14 day look-back period (excluding order renewals without change and hospital inpatient visits).
3. In order for an individual to be approved under the physician involvement pathway, the individual must have:
 - a. one day of doctor visits and at least 4 new order changes within the 14 day look-back period; or
 - b. at least 2 days of doctor visits and at least 2 new order changes during the 14 day look-back period.
 - i. - iii. Repealed.
4. Supporting documentation is required and must include:
 - a. a copy of the physician's orders; or
 - b. the home health care plans documenting the diagnosis, treatments and conditions within the designated time frames; or
 - c. the appropriate form designated by OAAS to document the individual's medical status and condition.
5. This pathway is approved for limited stay/length of service as deemed appropriate by OAAS.

G. Treatments and Conditions Pathway

1. The intent of this pathway is to identify individuals with unstable medical conditions that may be affecting a person's ability to care for himself/herself.

a. - h. Repealed.

2. The following are investigated for this pathway:

a. stage 3-4 pressure sores during the 14 day look-back period;

b. intravenous feedings during the 7 day look-back period;

i. - iii. Repealed.

c. intravenous medications during the 14 day look-back period;

d. daily tracheostomy care and ventilator/respiratory suctioning during the 14 day look-back period;

e. pneumonia during the 14 day look-back period and the individual had associated need for assistance with IADLs, ADLs, or restorative nursing care;

f. daily respiratory therapy provided by a qualified professional during the 14 day look-back period;

g. daily insulin injections with two or more order changes during the 14 day look-back period; or

h. peritoneal or hemodialysis during the 14 day look-back period.

3. In order for an individual to be approved under the treatments and conditions pathway, the individual must have:

a. any one of the conditions listed in G.2.a-h above; and

b. supporting documentation for the specific condition(s) identified. Acceptable documentation must include:

i. a copy of the physician's orders; or
ii. the home health care plans documenting the diagnosis, treatments and conditions within the designated time frames; or

iii. the appropriate form designated by OAAS to document the individual's medical status and condition.

4. This pathway is approved for limited stay/length of service as deemed appropriate by OAAS.

H. Skilled Rehabilitation Therapies Pathway

1. The intent of this pathway is to identify individuals who have received, or are scheduled to receive physical therapy, occupational therapy or speech therapy.

2. In order for an individual to be approved under this pathway, the individual must:

a. have received at least 45 minutes of active physical therapy, occupational therapy, and/or speech therapy during the seven day look-back period; or

b. be scheduled to receive at least 45 minutes of active physical therapy, occupational therapy, and/or speech therapy scheduled during the seven day look-forward period.

i. - v. Repealed.

3. Supporting documentation of the therapy received/scheduled during the look-back/look-forward period, is required and must include:

a. a copy of the physician's orders for the received/scheduled therapy;

b. the home health care plan notes indicating the received/scheduled therapy;

c. progress notes indicating the physical, occupational, and/or speech therapy received;

d. nursing facility or hospital discharge plans indicating the therapy received/scheduled; or

e. the appropriate form designated by OAAS to document the individual's medical status and condition.

4. This pathway is approved for limited stay/length of service as deemed appropriate by OAAS.

I. Behavior Pathway

1. The intent of this pathway is to identify individuals who have experienced repetitive behavioral challenges which have impacted his/her ability to function in the community during the specified screening/assessment look-back period.

a. - d. Repealed

2. The following are investigated for this pathway:

a. wandering;

i. - iv. Repealed.

b. verbally or physically abusive behavior;

i. - iv. Repealed.

c. socially inappropriate behavior; and

d. delusions or hallucinations.

d.i. - e. Repealed.

3. In order for an individual to be approved under the behavior pathway, the individual must have either:

a. exhibited any one of the following behaviors four or more days of the screening tool's seven day look-back period:

i. wandering;

ii. verbally abusive;

iii. physically abusive; or

iv. socially inappropriate or disruptive;

or

b. exhibited any one of the following behaviors during the assessment tool's three day look-back period and behavior(s) were not easily altered:

- i. wandering;
- ii. verbally abusive;
- iii. physically abusive; or
- iv. socially inappropriate or disruptive;

or

c. experienced delusions or hallucinations that impacted his/her ability to live independently in the community within the specific screening/assessment tool's look-back period.

J. Service Dependency Pathway

1. The intent of this pathway is to identify individuals who are currently in a nursing facility or receiving services through the Adult Day Health Care Waiver, the Community Choices Waiver, Program of All Inclusive Care for the Elderly (PACE) or receiving long-term personal care services.

2. - 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 and the Office of Aging and Adult Services, LR 37:342 (January 2011),

amended LR 39:1471 (June 2013), LR 41:1289 (July 2015), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

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.

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, 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.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, September 28, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing

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Rule Title: Nursing Facilities
Standards for Payment
Level of Care Pathways

Date Rule Takes Effect: November 20, 2017

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL 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 17-18. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 17-18 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 17-18. It is anticipated that \$594 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed Rule amends the provisions governing the standards for payment for nursing facilities in order to further clarify existing provisions governing level of care pathways. It is anticipated that implementation of this proposed rule will have no costs or benefits to nursing facilities in FY 17-18, FY 18-19 and FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee



Legislative Fiscal Officer
or Designee

8/10/17

Date of Signature



LDH/BHSF Budget Head

8/10/17

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule amends the provisions governing the standards for payment for nursing facilities in order to further clarify existing provisions governing level of care pathways.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing level of care pathways in order to clarify the provisions of the June 20, 2013 Rule which amended the provisions governing the standards for payment for nursing facilities to clarify level of care determinations (Louisiana Register, Volume 41, Number 7). The department now proposes to amend the provisions governing level of care pathways in order to further clarify these provisions.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session.

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. 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 17-18. In FY 17-18, \$1,188 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ If yes, attach documentation.
(b) _____ If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

| COST | FY 17-18 | FY 18-19 | FY 19-20 |
|-----------------------|----------------|------------|------------|
| PERSONAL SERVICES | | | |
| OPERATING EXPENSES | \$1,188 | \$0 | \$0 |
| PROFESSIONAL SERVICES | | | |
| OTHER CHARGES | | | |
| REPAIR & CONSTR. | | | |
| POSITIONS (#) | | | |
| TOTAL | \$1,188 | \$0 | \$0 |

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 17-18, \$1,188 is included for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

| Source | FY 17-18 | FY 18-19 | FY 19-20 |
|--------------------|----------------|------------|------------|
| STATE GENERAL FUND | \$594 | \$0 | \$0 |
| SELF-GENERATED | | | |
| FEDERAL FUND | \$594 | \$0 | \$0 |
| OTHER (Specify) | | | |
| Total | \$1,188 | \$0 | \$0 |

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

| REVENUE INCREASE/DECREASE | FY 17-18 | FY 18-19 | FY 19-20 |
|---------------------------|--------------|------------|------------|
| STATE GENERAL FUND | | | |
| AGENCY SELF-GENERATED | | | |
| RESTRICTED FUNDS* | | | |
| FEDERAL FUNDS | \$594 | \$0 | \$0 |
| LOCAL FUNDS | | | |
| Total | \$594 | \$0 | \$0 |

**Specify the particular fund being impacted*

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

In FY 17-18, \$594 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule amends the provisions governing standards for payment for nursing facilities in order to further clarify existing provisions governing level of care pathways.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule will have no costs or benefits to nursing facilities in FY 17-18, FY 18-19 and FY 19-20.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.