

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Medicaid Reimbursement for Licensed Midwife or Certified Nurse Midwife Services

(LAC 50:IX.15161, 15163 and XV.27101)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15161 and §15163, and amend LAC 50:XV.27101 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.

Act 207 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to implement a Medicaid reimbursement rate for midwifery services that is, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. In compliance with Act 207, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers

(*Louisiana Register*, Volume 49, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the August 1, 2023 Emergency Rule.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part IX. Professional Services Program
Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter G. Midwifery Services

§15161. General Provisions

A. Certified nurse midwives and licensed midwives shall be reimbursed as a percentage of physician reimbursement according to the established fee schedule.

AUTHORITY NOTE: 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 49:

§15163. Reimbursement Methodology

A. Effective for dates of service on or after August 1, 2023, services related to pregnancy and childbirth provided by certified nurse midwives (including licensed midwives), shall be reimbursed at 95 percent of the physician fee on file.

AUTHORITY NOTE: 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 49:

Part XV. Services for Special Populations
Subpart 18. Free-Standing Birthing Centers

Chapter 271. Reimbursement

§27101. Reimbursement Methodology

A. - A.3. ...

B. Effective for dates of service on or after August 1, 2023, the reimbursement amounts for certified nurse midwives and licensed nurse midwives will be as follows:

1. certified nurse midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services rendered in the Professional Services Program; and

2. licensed midwives providing birthing services within a FSBC shall be reimbursed at 95 percent of the published fee schedule rate for physician services in the Professional Services Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:2360 (November 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

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, since it will ensure that beneficiaries have continued access to care by licensed midwives and certified nurse midwives.

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 the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have a positive impact on small businesses, since it increases reimbursement to providers of midwifery services.

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 services they already render.

Public Comments

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on September 29, 2023.

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 September 11, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a

public hearing at 9:30 a.m. on September 28, 2023 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 September 11, 2023. 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.

Stephen R. Russo, JD

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Veronica Dent Dept.: Health

Phone: 342-3238 Office: Bureau of Health Services Financing

Return
Address: P.O. Box 19030 Rule
Title: Medicaid Reimbursement for Licensed
Baton Rouge, LA Midwife or Certified Nurse
Midwife Services

Date Rule
Takes Effect: August 1, 2023

SUMMARY
(Use complete sentences)

In accordance with Section 961 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 STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND 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 result in increased state costs of approximately \$44,085 for FY 23-24, \$61,155 for FY 24-25, and \$62,989 for FY 25-26. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 23-24 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 implementation of this proposed rule will increase federal revenue collections by approximately \$167,096 for FY 23-24, \$228,125 for FY 24-25, and \$234,969 for FY 25-26. It is anticipated that \$270 will be collected in FY 23-24 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 NON-GOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the August 1, 2023 Emergency Rule, which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers, in compliance with Act 207 of the 2023 Regular Session of the Louisiana Legislature. The Act requires that the Medicaid reimbursement rate for midwifery services be, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. This proposed rule will ensure that Medicaid beneficiaries have continued access to these services. Implementation of this proposed rule is anticipated to increase reimbursement to licensed midwives and certified nurse midwives by \$210,641 for FY 23-24, \$289,280 for FY 24-25, and \$297,958 for FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

08/09/2023
Date of Signature

Patrice Thomas, Deputy Fiscal Officer
Legislative Fiscal Officer or Designee

8/09/2023
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 deliberation 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 continues the provisions of the August 1, 2023 Emergency Rule, which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers, in compliance with Act 207 of the 2023 Regular Session of the Louisiana Legislature. The Act requires that the Medicaid reimbursement rate for midwifery services be, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice.

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

Act 207 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to implement a Medicaid reimbursement rate for midwifery services that is, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. In compliance with Act 207, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers (*Louisiana Register*, Volume 49, Number 8). This proposed Rule is being promulgated in order to continue the provisions of the August 1, 2023 Emergency Rule.

- 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.

Yes. It is anticipated that implementation of this proposed rule will result in increased programmatic costs to the Medicaid Program of approximately \$211,181 for FY 23-24, \$289,280 for FY 24-25, and \$297,958 for FY 25-26. In FY 23-24, \$540 is included for the state's administrative expense for promulgation of this 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) _____ Yes. If yes, attach documentation.

(b) X NO. If no, provide justification as to why this rule change should be published at this time

Act 207 of the 2023 Regular Session of the Louisiana Legislature directed the Department of Health to increase the Medicaid reimbursement rate for midwifery services (licensed midwives and certified nurse midwives) at a minimum 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth. Act 447 of the 2023 Regular Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and the operation of the Medicaid Program, and thereby, authorizes the expenditure of these funds. Implementation of this proposed rule will provide increased reimbursement to providers of midwifery services and will ensure that Medicaid beneficiaries have continued access to these services.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

COSTS	FY 24	FY 25	FY 26
Personal Services			
Operating Expenses	\$540	\$0	\$0
Professional Services			
Other Charges	\$210,641	\$289,280	\$297,958
Equipment			
Major Repairs & Constr.			
TOTAL	\$211,181	\$289,280	\$297,958
POSITIONS (#)			

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.

The expenses reflected above are the estimated increases in expenditures in the Medicaid program. In FY 23-24, \$540 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 24	FY 25	FY 26
State General Fund	\$44,085	\$61,155	\$62,989
Agency Self-Generated			
Dedicated			
Federal Funds	\$167,096	\$228,125	\$234,969
Other (Specify)			
TOTAL	\$211,181	\$289,280	\$297,958

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 THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments 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.

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

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

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

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

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

REVENUE INCREASE/DECREASE	FY 24	FY 25	FY 26
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$167,096	\$228,125	\$234,969
Local Funds			
TOTAL	\$167,096	\$228,125	\$234,969

*Specify the particular fund being impacted.

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

In FY 23-24, \$270 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS

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

This proposed rule continues the provisions of the August 1, 2023 Emergency Rule, which adopted provisions in the Professional Services Program governing reimbursement for services provided by licensed midwives and certified nurse midwives and amended the provisions governing free-standing birthing centers to increase the reimbursement rate for services rendered by these providers, in compliance with Act 207 of the 2023 Regular Session of the Louisiana Legislature. The Act requires that the Medicaid reimbursement rate for midwifery services be, at a minimum, 95 percent of the amount reimbursed to licensed physicians for the provision of the same health services in pregnancy and childbirth when acting within their scope of practice. This proposed rule will ensure that Medicaid beneficiaries have continued access to these services.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Implementation of this proposed rule is anticipated to increase reimbursement to licensed midwives and certified nurse midwives by \$210,641 for FY 23-24, \$289,280 for FY 24-25, and \$297,958 for FY 25-26.

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.