**NOTICE OF INTENT**

**Department of Health**
**Bureau of Health Services Financing**

**Disproportionate Share Hospital Payments**
**Major Medical Centers**
**Specialized Burn Care Units**
**(LAC 50:V.2717)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:V.2717 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 determined that it was necessary to promulgate an Emergency Rule to amend the provisions governing disproportionate share hospital (DSH) payments for major medical centers in order to establish qualification criteria, and a DSH payment methodology, for large private hospitals located in the southwestern area of the state (LDH Region 4) which provide specialized intensive care burn units (*Louisiana Register*, Volume 44, Number 7). This proposed Rule is being promulgated to continue the provisions of the June 30, 2018 Emergency Rule.

**TITLE 50**

**PUBLIC HEALTH-MEDICAL ASSISTANCE**
**Part V. Hospital Services**
**Subpart 3. Disproportionate Share Hospital Payments**

**Chapter 27. Qualifying Hospitals**

**§2717. Major Medical Centers with Specialized Burn Care Units Located in the Southwestern Area of the State**

A. Effective for dates of service on or after June 30, 2018, hospitals qualifying for payments as major medical centers located in the southwestern area of the state shall meet the following criteria:

1. be a private, non-rural hospital located in Department of Health administrative region 4;

2. have at least 175 inpatient beds as reported on the Medicare/Medicaid cost report, Worksheet S-3, column 2, lines 1-18, for the state fiscal year ending June 30, 2017. For qualification purposes, inpatient beds shall exclude nursery and Medicare-designated distinct part psychiatric unit beds;

3. have a burn intensive care unit that is reported on the Medicare/Medicaid cost report, Worksheet S-3, line 10, columns 1-8, for the state fiscal year ending June 30, 2017;

4. does not qualify as a Louisiana low-income academic hospital under the provisions of §3101; and

5. does not qualify as a party to a low income and needy care collaboration agreement with the Department of Health under the provisions of §2713.

B. Payment Methodology. Effective for dates of service on or after June 30, 2018, each qualifying hospital shall be paid a

DSH adjustment payment which is the pro rata amount calculated by dividing their hospital specific allowable uncompensated care costs by the total allowable uncompensated care costs for all hospitals qualifying under this category and multiplying by the funding appropriated by the Louisiana Legislature in the applicable state fiscal year for this category of hospitals.

1. Costs, patient specific data and documentation that qualifying criteria is met shall be submitted in a format specified by the department.

2. Costs and lengths of stay shall be reviewed by the department for reasonableness before payments are made.

3. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

4. A pro rata decrease, necessitated by conditions specified in §2501.B.1 above for hospitals described in this Section, will be calculated based on the ratio determined by dividing the hospital's uncompensated costs by the uncompensated costs for all of the qualifying hospitals described in this Section, then multiplying by the amount of disproportionate

share payments calculated in excess of the federal DSH allotment.

a. Additional payments shall only be made after finalization of the Centers for Medicare and Medicaid Services' (CMS) mandated DSH audit for the state fiscal year.

b. Payments shall be limited to the aggregate amount recouped from the qualifying hospitals described in this Section, based on the reported DSH audit results.

c. If the hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid hospitals shall be paid on a pro rata basis calculated using each hospital's amount underpaid, divided by the sum of underpayments for all of the hospitals described in this Section.

AUTHORITY NOTE: 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 44:

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.

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 ensure that Medicaid recipients in southwest Louisiana have continued access to specialized intensive care treatment for severe burns.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as these payments will ensure provider participation and reduce the financial burden on families in need of specialized intensive care treatment for burn victims.

In compliance with House Concurrent Resolution 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 may reduce the total direct and indirect cost to the provider to provide the same level of service. This proposed Rule may also enhance the provider's ability to provide the same level of service since this proposed Rule increases the payment to providers for the same services they already render.

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 Wednesday, August 29, 2018 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 Statement: | Veronica Dent | Dept.: | Health |
| Phone: | 342-3238 | Office: | Bureau of Health Services Financing |
| Return Address: | P.O. Box 91030 Baton Rouge, LA | Rule Title: | Disproportionate Share Hospital Payments Major Medical Centers Specialized Burn Care Units |
| | | Date Rule Takes Effect: | June 30, 2018 |

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 the implementation of this proposed rule will result in estimated state general fund programmatic costs of $4,462,325 for FY 18-19, $4,595,861 for FY 19-20 and $4,733,737 for FY 20-21. It is anticipated that $648 ($324 SGF and $324 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The state match shall be funded through an intergovernmental transfer of funds from the qualifying hospital services provider. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.23 percent in FYs 18-19, 19-20 and 20-21.*

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

*It is anticipated that federal revenue collections will increase by approximately $8,012,465 for FY 18-19, $8,252,505 for FY 19-20 and $8,500,080 for FY 20-21 and self-generated revenue collections will increase by approximately $4,462,325 in FY 18-19, $4,595,861 in FY 20-21 and $4,733,737 in FY 20-21. It is anticipated that $324 will be expended in FY 18-19 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.23 percent in FYs 18-19, 19-20 and 20-21.*

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

*This proposed Rule continues the provisions of the June 30, 2018 Emergency Rule which amended the provisions governing disproportionate share hospital (DSH) payments for major medical centers in order to establish qualification criteria and a DSH payment methodology for a large private hospital located in the southwestern area of the state (LDH Region 4) which provides specialized intensive care burn unit services (1 hospital). It is anticipated that implementation of this proposed rule will have economic benefits to a qualifying hospital and will increase programmatic expenditures for DSH payments by approximately $12,474,142 for FY 18-19, 12,848,366 for FY 19-20 and $13,233,817 for FY 20-21.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

*It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, the increase in payments may have a positive impact the financial standing of the provider and could possibly cause an increase in employment opportunities.*

| | |
|---|---|
| Signature of Agency Head or Designee | Evan Brasseaux, Staff Director<br>Legislative Fiscal Officer or Designee |
| Jen Steele, Medicaid Director<br>Typed name and Title of Agency Head or Designee | 7/10/18<br>Date of Signature |
| LDH/BHSF Budget Head | 07/10/18<br>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 continues the provisions of the June 30, 2018 Emergency Rule which amended the provisions governing DSH payments for major medical centers in order to establish qualification criteria and a DSH payment methodology for a large private hospital located in the southwestern area of the state (LDH Region 4) which provides specialized intensive care burn unit services.*

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, Bureau of Health Services Financing determined that it was necessary to promulgate an Emergency Rule to amend the provisions governing disproportionate share hospital (DSH) payments for major medical centers in order to establish qualification criteria and a DSH payment methodology for a large private hospital located in the southwestern area of the state (LDH Region 4) which provides specialized intensive care burn unit services (Louisiana Register, Volume 44, Number 7). This proposed Rule is being promulgated to continue the provisions of the June 30, 2018 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, this proposed rule will result in an increase in programmatic expenditures in the Medicaid Program by approximately $12,474,790 for FY 18-19, $12,848,366 for FY 19-20 and $13,233,817 for FY 20-21. In FY 18-19, $648 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) _X_ If no, provide justification as to why this rule change should be published at this time.

*Act 2 of the 2018 Second Extraordinary Session of the Louisiana Legislature allocated funds to the Medical Vendor Program for payments to providers and thereby authorizes the expenditure of these funds. This rule change should be published at this time to ensure continued access to specialized intensive care services for burn victims in the southwest Louisiana area, and to allow the state to maximize funding by securing new federal revenue to fund an intergovernmental financing mechanism with a qualifying hospital in order to encourage continued participation in the Medicaid Program.*

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 18-19** | **FY 19-20** | **FY 20-21** |
|---|---|---|---|
| PERSONAL SERVICES | | | |
| OPERATING EXPENSES | $648 | $0 | $0 |
| PROFESSIONAL SERVICES | | | |
| OTHER CHARGES | $12,474,142 | $12,848,366 | $13,233,817 |
| REPAIR & CONSTR. | | | |
| POSITIONS (#) | | | |
| **TOTAL** | **$12,474,790** | **$12,848,366** | **$13,233,817** |

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 programmatic expenditures in the Medicaid Program. In FY 18-19, $648 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 18-19** | **FY 19-20** | **FY 20-21** |
|---|---|---|---|
| STATE GENERAL FUND | | | |
| SELF-GENERATED | $4,462,325 | $4,595,861 | $4,733,737 |
| FEDERAL FUND | $8,012,465 | $8,252,505 | $8,500,080 |
| OTHER (Specify) | | | |
| **Total** | **$12,474,790** | **$12,848,366** | **$13,233,817** |

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.*

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 18-19** | **FY 19-20** | **FY 20-21** |
|---|---|---|---|
| STATE GENERAL FUND | | | |
| AGENCY SELF-GENERATED | $4,462,325 | $4,595,861 | $4,733,737 |
| RESTRICTED FUNDS* | | | |
| FEDERAL FUNDS | $8,012,465 | $8,252,505 | $8,500,080 |
| LOCAL FUNDS | | | |
| **Total** | **$12,474,790** | **$12,848,366** | **$13,233,817** |

***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.

   *The amounts reflected above are the estimated increases in self-generated revenue collections and the federal share of programmatic expenditures for the Medicaid Program. In FY 18-19, $324 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 continues the provisions of the June 30, 2018 Emergency Rule which amended the provisions governing DSH payments for major medical centers in order to establish qualification criteria and a DSH payment methodology for a large private hospital located in the southwestern area of the state (LDH Region 4) which provides specialized intensive care burn unit services (1 hospital).*

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 economic benefits to a qualifying hospital and will increase programmatic expenditures for DSH payments by approximately $12,474,142 for FY 18-19, $12,848,366 for FY 19-20 and $13,233,817 for FY 20-21.*

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.

*It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, the increase in payments may have a positive impact the financial standing of the provider and could possibly cause an increase in employment opportunities.*