

NOTICE OF INTENT

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

**Inpatient Hospital Services
Out-of-State Hospitals
(LAC 50:v.Chapter 24)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:v.Chapter 24 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 is required under 42 CFR §431.52 to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana. The department has determined that the current reimbursement rates for inpatient services furnished by out-of-state hospitals are not in alignment with those of in-state hospitals.

In compliance with 42 CFR §431.52, the Department of Health, Bureau of Health Services Financing proposes to adopt provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those

services with current in-state inpatient per diem rates for like hospitals/services.

Title 50
PUBLIC HEALTH-MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals Services

Chapter 24. Out-of-State Hospitals

§2401. General Provisions

A. Effective for dates of service on or after September 20, 2023, payment will be made to out-of-state hospitals for provision of inpatient services which meet at least one of the following conditions:

1. medical services are needed because of a medical emergency;
2. medical services are needed and the beneficiaries' health would be endangered if they were required to travel to their state of residence;
3. the state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; or
4. it is general practice for beneficiaries in a particular locality to use medical resources in another state.

B. Hospitals located in counties in Mississippi, Arkansas, and Texas that border the state of Louisiana are referred to as trade area hospitals.

C. Trade area hospitals that are unable to fully treat presenting Louisiana beneficiaries shall transfer patients to the Louisiana hospital within the closest proximity with available services.

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

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:

§2403. Reimbursement Methodology

A. Effective for dates of service on or after September 20, 2023, payment for all out-of-state inpatient services, other than organ transplants, shall be made at the Louisiana in-state prospective peer group rate in effect for the corresponding type of non-teaching hospital or specialty carve out service.

1. Separate prospective per diem rates will be paid for out-of-state inpatient services provided in acute care general hospitals, psychiatric hospitals and services, rehabilitation hospitals, long term acute care hospitals, children's hospitals, nursery services, neonatal intensive care services, pediatric intensive care services, and burn unit intensive care services.

B. Effective for dates of service on or after September 20, 2023, payment for inpatient organ transplant service provided by out-of-state hospitals shall be paid as follows:

1. 40 percent of allowable covered billed charges for beneficiaries ages 21 and above; or
2. 60 percent of allowable covered billed charges for beneficiaries under age 21.

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:

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 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 no impact on small businesses.

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, or on the direct or indirect cost to the provider, but may negatively impact on the provider's ability to provide the same level of service as described in HCR 170, if the reimbursement rate change results in decreased payments to the provider.

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 July 31, 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 July 10, 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 July 27, 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 July 10, 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 91030 Rule Title: Inpatient Hospital Services
Baton Rouge, LA Title: Out-of-State Hospitals

Date Rule
Takes Effect: September 20, 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 increase state costs by approximately \$324 for FY 22-23 and reduce state costs by approximately \$9,708,338 for FY 23-24, and \$14,274,036 for FY 24-25. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 22-23 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 this proposed rule will increase federal revenue collections by approximately \$324 for FY 22-23 and reduce federal revenue collections by approximately \$21,180,422 for FY 23-24 and \$30,234,964 FY 24-25. It is anticipated that \$324 will be collected in FY 22-23 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 adopts provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those services with current in-state inpatient per diem rates for like hospitals/services. The proposed rule complies with 42 CFR §431.52, which requires the state to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana. This will allow the beneficiaries to maintain access to medically necessary out-of-state inpatient hospital services. Implementation of this proposed rule is anticipated to decrease expenditures for inpatient out-of-state hospital services by approximately \$30,888,760 for FY 23-24 and \$44,509,000 for FY 24-25, which may negatively impact providers if the reimbursement rate change results in decreased payments.

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

06/08/2023

Date of Signature

Evan Brassoff, Statewide Deputy Legislative Fiscal Officer

Legislative Fiscal Officer or Designee

Fiscal Officer

6/8/23

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 adopts provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those services with current in-state inpatient per diem rates for like hospitals/services. The proposed rule complies with 42 CFR §431.52, which requires the state to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana.

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

The Department of Health, Bureau of Health Services Financing is required under 42 CFR §431.52 to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana. The department has determined that the current reimbursement rates for inpatient services furnished by out-of-state hospitals are not in alignment with those of in-state hospitals.

In compliance with 42 CFR §431.52, the Department of Health, Bureau of Health Services Financing proposes to adopt provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those services with current in-state inpatient per diem rates for like hospitals/services.

- 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 result in a decrease in programmatic expenditures of approximately \$30,888,760 for FY 23-24, and \$44,509,000 for FY 24-25. In FY 22-23, \$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) _____ Yes. If yes, attach documentation.

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

**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 23	FY 24	FY 25
Personal Services			
Operating Expenses	\$648	\$0	\$0
Professional Services			
Other Charges	\$0	(\$30,888,760)	(\$44,509,000)
Equipment			
Major Repairs & Constr.			
TOTAL	\$648	(\$30,888,760)	(\$44,509,000)
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 savings reflected above for FY 23-24 and FY 24-25 are the estimated decreases in expenditures in the Medicaid program. In FY 22-23, \$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 23	FY 24	FY 25
State General Fund	\$324	(\$9,708,338)	(\$14,274,036)
Agency Self-Generated			
Dedicated			
Federal Funds	\$324	(\$21,180,422)	(\$30,234,964)
Other (Specify)			
TOTAL	\$648	(\$30,888,760)	(\$44,509,000)

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 23	FY 24	FY 25
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$324	(\$21,180,422)	(\$30,234,964)
Local Funds			
TOTAL	\$324	(\$21,180,422)	(\$30,234,964)

*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.

The amounts reflected above are the estimated decreases in federal revenue collections for FY 23-24 and FY 24-25. In FY 22-23, \$324 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 adopts provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those services with current in-state inpatient per diem rates for like hospitals/services. The proposed rule complies with 42 CFR §431.52, which requires the state to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana. This will allow the beneficiaries to maintain access to medically necessary out-of-state inpatient hospital 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 decrease expenditures for inpatient out-of-state hospital services by approximately \$30,888,760 for FY 23-24 and \$44,509,000 for FY 24-25, which may negatively impact providers if the reimbursement rate change results in decreased payments.

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.