

NOTICE OF INTENT

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

**Nursing Facilities
Standards for Payment
(LAC 50:II.10101 and 10156)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:II.10101 and §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, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend the provisions governing the standards for payments for nursing facilities in order to clarify the definitions of admission and continued stay, clarify the provisions governing the levels of care pathways and eliminate the behavior pathway for meeting nursing facility level of care.

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 A. Abbreviations and Definitions

§10101. Definitions

A. This glossary contains a comprehensive list of abbreviations and definitions used in the requirements for payment for nursing facilities.

Admission—the date a person enters the facility and is admitted as a resident.

Continued Stay—a request for medical certification beyond the date of the currently authorized period.

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 LR 23:970 (August 1997), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

Subchapter G. Levels of Care

§10156. Level of Care Pathways

A. . .

B. When specific eligibility criteria are met within a pathway, that pathway is said to have triggered. The Medicaid program defines nursing facility level of care for Medicaid eligible individuals as the care required by individuals who meet or trigger any one of the established level of care pathways described in this Subchapter. The pathways of eligibility focus on information used to determine if an individual has met or triggered a level of care pathway. When a pathway is triggered, that individual may be approved for a limited stay/length of service as deemed appropriate by OAAS.

C. - F.4.c. ...

5. Repealed.

G. - G.3.b.iii. ...

4. Repealed.

H. - H.3.e. ...

4. Repealed.

I. Behavior Pathway

1. Effective upon promulgation of this Rule, the behavior pathway will be eliminated as a pathway for meeting nursing facility level of care.

2. Individuals receiving services who met the nursing facility level of care only by triggering the behavior pathway prior to promulgation of this Rule shall continue to

remain eligible for services requiring nursing facility level of care until:

- a. the individual is discharged from long term care services; or
- b. the individual has been found eligible for services in another program or setting more appropriate to their needs.

2.c. - 3.c. Repealed.

J. - J.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 43:2187 (November 2017), 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 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, but may increase direct or indirect cost to the provider to provide the same level of service due to the reduction of Medicaid payments. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the reduction in payments adversely impacts the provider's financial standing.

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, April 26, 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: Robert Andrepont

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Office: Bureau of Health Services
Financing

Return P.O. Box 91030
Address: Baton Rouge, LA

Rule Title: Nursing Facilities
Standards for Payment

Date Rule Takes Effect: June 20, 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 implementation of this proposed rule will result in a cost to the state of \$324 for FY 17-18, and programmatic savings of approximately \$45,798 for FY 18-19 and \$47,172 for FY 19-20 due to shifting costs from the Nursing Facility Program to the Behavioral Health Program under managed care as a result of the level of care pathway changes (approximately 10 recipients impacted). It is anticipated that \$648 (\$324 SGF and \$324 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)

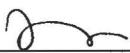
It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by \$324 for FY 17-18 and reduce collections by approximately \$82,236 for FY 19-20 and \$84,703 for FY 20-21. It is anticipated that \$324 will be collected in FY 17-18 for the federal share of 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 payments for nursing facilities in order to clarify the definitions of admission and continued stay, clarify the provisions governing the levels of care pathways and eliminate the behavior pathway for meeting nursing facility level of care. The proposed rule will reduce Medicaid Program expenditures by shifting costs from the Nursing Facility Program (which has higher costs) to the Behavioral Health Program under managed care for approximately 10 recipients. It is anticipated that implementation of this proposed rule will reduce payments to nursing facilities by approximately \$128,034 for FY 18-19 and \$131,875 for FY 19-20; however, providers will benefit from clearly identified criteria for provision of services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

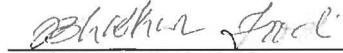
This rule has no known effect on competition and employment.


Signature of Agency Head
or Designee


Legislative Fiscal Officer
or Designee

Jen Steele, Medicaid Director
Typed name and Title of
Agency Head or Designee

3/8/18
Date of Signature


LDH/BHSC Budget Head

03/07/18
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 payments for nursing facilities in order to clarify the definitions of admission and continued stay, clarify the provisions governing the levels of care pathways and eliminate the behavior pathway for meeting nursing facility level of care.

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 and the Office of Aging and Adult Services propose to amend the provisions governing the standards for payments for nursing facilities in order to clarify the definitions of admission and continued stay, clarify the provisions governing the levels of care pathways and eliminate the behavior pathway for meeting nursing facility level of care.

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 cost of \$648 for FY 17-18 and programmatic savings of approximately \$128,034 for FY 18-19 and \$131,875 for FY 19-20. In FY 17-18, \$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) 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	\$648	(\$128,034)	(\$131,875)
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$648	(\$128,034)	(\$131,875)

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 reductions in expenditures for nursing facility services. In FY 17-18, \$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 17-18	FY 18-19	FY 19-20
STATE GENERAL FUND	\$324	(\$45,798)	(\$47,172)
SELF-GENERATED			
FEDERAL FUND	\$324	(\$82,236)	(\$84,703)
OTHER (Specify)			
Total	\$648	(\$128,034)	(\$131,875)

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	\$324	(\$82,236)	(\$84,703)
LOCAL FUNDS			
Total	\$324	(\$82,236)	(\$84,703)

**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 reductions in the federal share of Medicaid Program expenditures for nursing facilities. In FY 17-18, \$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 amends the provisions governing the standards for payments for nursing facilities in order to clarify the definitions of admission and continued stay, clarify the provisions governing the levels of care pathways and eliminate the behavior pathway for meeting nursing facility level of care.

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

The proposed rule will reduce Medicaid Program expenditures by shifting costs from the Nursing Facility Program (which has higher costs) to the Behavioral Health Program under managed care for approximately 10 recipients. It is anticipated that implementation of this proposed rule will reduce payments to nursing facilities by approximately \$128,034 for FY 18-19 and \$131,875 for FY 19-20; however, providers will benefit from clearly identified criteria for provision of services.

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.