

NOTICE OF INTENT

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

**Ambulatory Surgical Centers
Licensing Standards
(LAC 48:I.4541)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4541 as authorized by R.S. 36:254 and R.S. 40:2131-2141. 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 promulgated a Notice of Intent which proposed to amend the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to: 1) add the definition of optometry; 2) exempt ASC medical staff qualified as optometrists and practicing optometry from the requirement to also be staff members or have admitting privileges at local hospitals; and 3) require ASCs to have a written procedure for the immediate transfer of patients requiring emergency services to a local facility that meets the federal requirements for payment and to provide the facility with a notice of operations and patient population served (*Louisiana Register*, Volume 47, Number 12). As a result of comments received, the department determined that it

was necessary to abandon the Notice of Intent published in the December 20, 2021 edition of the *Louisiana Register*.

The department now proposes to promulgate a revised Notice of Intent to amend the provisions governing the licensing of ASCs in order to update the requirements for transfer agreements from ASCs to licensed hospitals in the event of an emergency that requires hospital admission.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 45. Ambulatory Surgical Center

Subchapter C. Admissions, Transfers and Discharges

§4541. Transfer Agreements and Patient Transfers

A. The ASC shall secure a written transfer agreement with at least one licensed hospital in the community. A transfer agreement shall serve as evidence of a procedure whereby patients can be transferred to a hospital should an emergency arise which would necessitate hospital admission.

1. - 2. Repealed.

B. The admitting physician of the ASC shall be responsible for effecting the safe and immediate transfer of patients from the ASC to a hospital when, in his/her medical opinion, hospital care is indicated.

C. The ASC is responsible for developing written policies and procedures for the immediate safe transfer of patients and coordination of admission into a licensed inpatient hospital when patients require emergency medical care beyond the capabilities of the ASC. The written policy shall include, but is not limited to:

1. identification of the ASC personnel who shall be responsible for the coordination of admission into an inpatient facility;

2. procedures for securing inpatient services;

3. procedures for the procurement of pertinent and necessary copies of the patient's medical record that will be sent with the transferring patient so that the information may be included in the patient's inpatient medical record;

4. identification of a minimum of one licensed inpatient hospital, via a current written transfer agreement; and

5. a requirement that the ASC will periodically provide the local inpatient hospital facility with written notice of its operations and patient population served.

D. - D.3. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2131-2141.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1742 (September 2017), amended LR 48:

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, 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.

Public Comments

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on June 29, 2022.

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 June 9, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on, June 29, 2022 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 June 9, 2022. 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. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips

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 Ambulatory Surgical Centers
Baton Rouge, La Licensing Standards
Date Rule Takes Effect: August 20, 2022

SUMMARY
(Use complete sentences)

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 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 have no programmatic fiscal impact to the state other than the cost of promulgation for FY 21-22. It is anticipated that \$648 will be expended in FY 21-22 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 not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

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

This proposed rule amends the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to update the requirements for transfer agreements from ASCs to licensed hospitals in the event of an emergency that requires hospital admission. It is anticipated that implementation of this proposed rule will not result in costs to ASCs and will have no impact on small businesses in FY 21-22, FY 22-23 and FY 23-24, but will be beneficial by clarifying procedures for the transfer of patients that require emergency care beyond the capabilities of the ASC.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tasheka Dukes
Signature of Agency Head or Designee

Tasheka Dukes, RN
Deputy Assistant Secretary
LDH Health Standards Section
Typed Name & Title of Agency Head or Designee

5/9/2022
Date of Signature

Evambray, Interim Deputy
Legislative Fiscal Officer or Designee Fiscal Officer

5/9/22
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 amends the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to update the requirements for transfer agreements from ASCs to licensed hospitals in the event of an emergency that requires hospital admission.

- 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 promulgated a Notice of Intent which proposed to amend the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to: 1) add the definition of optometry; 2) exempt ASC medical staff qualified as optometrists and practicing optometry from the requirement to also be staff members or have admitting privileges at local hospitals; and 3) require ASCs to have a written procedure for the immediate transfer of patients requiring emergency services to a local facility that meets the federal requirements for payment and to provide the facility with a notice of operations and patient population served (*Louisiana Register*, Volume 47, Number 12). As a result of comments received, the department determined that it was necessary to abandon the Notice of Intent published in the December 20, 2021 edition of the *Louisiana Register*.

The department now proposes to promulgate a revised Notice of Intent to amend the provisions governing the licensing of ASCs in order to update the requirements for transfer agreements from ASCs to licensed hospitals in the event of an emergency that requires hospital admission.

- 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 21-22. In FY 21-22, \$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 22 | FY 23 | FY 24 |
|-------------------------|--------------|--------------|--------------|
| Personal Services | | | |
| Operating Expenses | \$648 | \$0 | \$0 |
| Professional Services | | | |
| Other Charges | | | |
| Equipment | | | |
| Major Repairs & Constr. | | | |
| TOTAL | \$648 | \$0 | \$0 |
| 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.

In FY 21-22, \$648 will be spent for the state's administrative expense for promulgation of this proposed and final rule.

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

| SOURCE | FY 22 | FY 23 | FY 24 |
|-----------------------|--------------|--------------|--------------|
| State General Fund | \$648 | \$0 | \$0 |
| Agency Self-Generated | | | |
| Dedicated | | | |
| Federal Funds | | | |
| Other (Specify) | | | |
| TOTAL | \$648 | \$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 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 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?

| <u>REVENUE INCREASE/DECREASE</u> | <u>FY 22</u> | <u>FY 23</u> | <u>FY 24</u> |
|----------------------------------|--------------|--------------|--------------|
| State General Fund | | | |
| Agency Self-Generated | | | |
| Dedicated Funds* | | | |
| Federal Funds | | | |
| Local Funds | | | |
| <u>TOTAL</u> | | | |

*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.

**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 amends the provisions governing the licensing of ambulatory surgical centers (ASCs) in order to update the requirements for transfer agreements from ASCs to licensed hospitals in the event of an emergency that requires hospital admission

- 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.

It is anticipated that implementation of this proposed rule will not result in costs to ASCs and will have no impact on small businesses in FY 21-22, FY 22-23 and FY 23-24, but will be beneficial by clarifying procedures for the transfer of patients that require emergency care beyond the capabilities of the ASC.

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.