

NOTICE OF INTENT

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

**Nursing Facilities
Levels of Care
(LAC 50:II.10154 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.10154 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 provisions of 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 payment for nursing facilities in order to: 1) reflect the change in the current assessment tool utilized for level of care determinations; and 2) modify the pathway criteria language in order to include updated terminology contained within the new assessment tool.

Title 50

**PUBLIC HEALTH-MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 3. Standards for Payment**

Chapter 101. Standards for Payment for Nursing Facilities

Subchapter G. Levels of Care

§10154. Nursing Facility Level of Care Determinations

A. ...

B. In order for an individual to meet nursing facility level of care (NFLOC), functional and medical eligibility must be met as set forth and determined by the Office of Aging and Adult Services (OAAS). The functional and medical eligibility process is frequently referred to as the "nursing facility level of care determination."

C. ...

D. Individuals who are approved by OAAS, or its designee, as having met NFLOC must continue to meet medical and functional eligibility criteria on an ongoing basis.

E. A LOC screening conducted via telephone shall be superseded by a face-to-face LOC assessment, or audit review LOC determination as determined by OAAS or its designee.

F. - G. ...

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, Office of the Secretary, Division of Long Term Supports and Services, LR 32:2083 (November 2006), amended by the Office of Aging and Adult Services, LR 34:1032 (June 2008),

amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:341 (January 2011), LR 39:1471 (June 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 48:

§10156. Level of Care Pathways

A. - B. ...

C. The level of care pathways elicit specific information, within a specified time period, regarding the individual's:

1. - 4. ...

D. Activities of Daily Living Pathway

1. - 2. ...

3. The ADLs for which the LOC assessment elicits information include but are not limited to:

a. locomotion—how the individual moved around in his or her home;

b. dressing—how the individual dressed/undressed;

c. eating—how the individual ate or consumed food (this does not include meal preparation);

d. bed mobility—how the individual moved around while in bed;

e. transferring—how the individual moved from one surface to another (this excludes getting on and off of the toilet and getting in and out of the tub/shower);

f. toileting—how the individual got on and off the toilet (toilet transfer), wiped, arranged clothes, etc.;

g. personal hygiene—how the individual managed personal hygiene (this excludes baths/showers); and

h. bathing—how the individual took a full-body bath or shower (this excludes washing of hair and back).

4. Since an individual can vary in ADL performance from day to day, OAAS trained assessors shall capture the total picture of ADL performance over the specified time period.

5. In order for an individual to be approved under the ADL Pathway, the individual must score at the:

a. limited assistance level or greater on toileting, transferring, or bed mobility; or

b. ...

E. Cognitive Performance Pathway.

1. This pathway identifies individuals with the following cognitive difficulties:

a. short-term memory which determines the individual's functional capacity to remember recent events;

b. cognitive skills for daily decision making which determines the individual's actual performance in making

everyday decisions about tasks or activities of daily living such as:

- i. planning how to spend their day;
- ii. choosing what to wear;
- iii. knowing when to eat;
- iv. knowing and using space in home appropriately;
- v. using awareness of one's own strengths and limitations to ask for help when needed;
- vi. using environmental cues to organize and plan the day;
- vii. making prudent decisions regarding how and when to go places; and
- viii. using canes/walkers or other assistive devices/equipment reliably.

c. ...

2. In order for an individual to be approved under the cognitive performance pathway, the individual must have any one of the conditions noted below:

- a. severely impaired or greater impairment in daily decision making (e.g., never or rarely makes decisions);
- b. have a short-term memory problem and moderately impaired in daily decision making (e.g., the

individual's decisions are consistently poor or unsafe, and cues or supervision are required at all times);

c. have a short-term memory problem and the individual is sometimes understood (e.g., the individual's ability is limited to making concrete requests) or is rarely or never understood;

d. moderately impaired in daily decision making and the individual is often understood (e.g., the individual has difficulty finding words or finishing thoughts, and prompting is usually required);

e. moderately impaired in daily decision making and the individual is sometimes understood (e.g., the individual's ability is limited to making concrete requests) or is rarely or never understood; or

f. minimally impaired in daily decision making (e.g., his/her decisions are poor or unsafe in specific situations, and cues or supervision are needed) and the individual is sometimes understood, (e.g., the individual's ability is limited to making concrete requests) or is rarely or never understood;

g. - i. Repealed.

F. Physician Involvement Pathway

1. - 3.b. ...

4. Supporting documentation is required and must include:

a. ...

b. the home health care plans, or other medical provider documentation documenting the diagnosis, treatments, and conditions within the designated time frames; or

c. ...

G. Treatments and Conditions Pathway

1. - 2.h. ...

3. In order for an individual to be approved under the treatments and conditions pathway, the individual must have:

a. ...

b. supporting documentation for the specific condition(s) identified. Acceptable documentation must include:

i. ...

ii. the home health care plans, or other medical provider documentation documenting the diagnosis, treatments and conditions within the designated time frames; or

iii. ...

H. Skilled Rehabilitation Therapies Pathway

1. 2.b. ...

3. Supporting documentation of the therapy received/scheduled during the look-back/look-forward period is required and must include:

- a. ...
- b. the home health care plan, or other medical provider documentation notes indicating the received/scheduled therapy;

H.3.c. - 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 44:1019 (June 2018), LR 48:

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, 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 Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies 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: Nursing Facilities
Baton Rouge, LA Levels of Care
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 \$1,188 (\$594 SFG and \$594 FED) will be expended in FY 21-22 for the state's administrative expenses for promulgation of this proposed 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 other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$594 will be collected in FY 21-22 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 amends the provisions governing the standards for payment for nursing facilities in order to: 1) reflect the change in the current assessment tool utilized for level of care determinations; and 2) modify the pathway criteria language in order to include updated terminology contained within the new assessment tool. It is anticipated that implementation of this proposed rule will not result in costs to nursing facility providers in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by ensuring that the language in the administrative rule is consistent with the new assessment tool.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.



Signature of Agency Head or Designee

Patrick Gillies, Medicaid Executive Director
Typed Name & Title of Agency Head or Designee

5/9/2022
Date of Signature



Evan Brassell, Interim Deputy Fiscal Officer

Legislative Fiscal Officer or Designee

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 amend the provisions governing the standards for payment for nursing facilities in order to: 1) reflect the change in the current assessment tool utilized for level of care determinations; and 2) modify the pathway criteria language in order to include updated terminology contained within the new assessment tool.

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 and the Office of Aging and Adult Services propose to amend the provisions governing the standards for payment for nursing facilities in order to: 1) reflect the change in the current assessment tool utilized for level of care determinations; and 2) modify the pathway criteria language in order to include updated terminology contained within the new assessment tool.

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, \$1,188 is included for the state's administrative expense for promulgation of the 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	\$1,188	\$0	\$0
Professional Services			
Other Charges			
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,188	\$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, \$1,188 will be spent 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 22	FY 23	FY 24
State General Fund	\$594	\$0	\$0
Agency Self-Generated			
Dedicated			
Federal Funds	\$594	\$0	\$0
Other (Specify)			
TOTAL	\$1,188	\$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?

REVENUE INCREASE/DECREASE	FY 22	FY 23	FY 24
State General Fund			
Agency Self-Generated			
Dedicated Funds*			
Federal Funds	\$594	\$0	\$0
Local Funds			
TOTAL	\$594	\$0	\$0

*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 21-22, \$594 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 amends the provisions governing the standards for payment for nursing facilities in order to: 1) reflect the change in the current assessment tool utilized for level of care determinations; and 2) modify the pathway criteria language in order to include updated terminology contained within the new assessment tool.

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 nursing facility providers in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by ensuring that the language in the administrative rule is consistent with the new assessment tool.

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.