

NOTICE OF INTENT

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

**Nursing Facilities
Evacuation and Temporary Sheltering Costs
(LAC 50:II.20019)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.20019 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.

In compliance with the directives of Act 540 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for nursing facilities to provide for the facility-specific reimbursement of documented and allowable evacuation and temporary sheltering costs of Medicaid-certified nursing facilities (*Louisiana Register*, Volume 38, Number 5).

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the May 20, 2008 Rule governing the reimbursement methodology for nursing facilities to amend the provisions governing evacuation and temporary sheltering costs in order to

ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site when they are displaced (*Louisiana Register*, Volume 42, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 13, 2016 Emergency Rule.

Title 50

**PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement**

Chapter 200. Reimbursement Methodology

§20019. Evacuation and Temporary Sheltering Costs

[Formerly LAC 50:VII.1319]

A. - B.1.b.iii.(a). ...

c. any additional allowable costs as defined in the CMS Publication 15-1-21, last modified 9/28/2012, that are directly related to the evacuation and that would normally be allowed under the nursing facility case-mix rate.

B.2. - B.2.a.ii.(a). ...

b. care-related expenses as defined in LAC 50:II.20005 and incurred in excess of care-related expenses prior to the evacuation;

c. - c.ii. ...

d. any additional allowable costs as defined in the CMS Publication 15-1-21, last modified 9/28/2012, that are

directly related to the temporary sheltering and that would normally be allowed under the nursing facility case-mix rate.

B.3. - B.3.b.i. ...

C. Payment of Eligible Expenses

C.1. - C.2. ...

3. All eligible expenses documented and allowed under §20019 will be removed from allowable expenses when the nursing facility's Medicaid cost report is filed. These expenses will not be included in the allowable cost used to set case-mix reimbursement rates in future years.

a. Equipment purchases that are reimbursed on a rental rate under §20019.B.2c may have their remaining basis included as allowable cost on future costs reports provided that the equipment is in the nursing facility and being used. If the remaining basis requires capitalization under CMS Publication 15-1-21 guidelines, last modified 9/28/2012, then depreciation will be recognized.

4. ...

D. When a nursing facility (NF) resident is evacuated to a temporary shelter site (an unlicensed sheltering site or a licensed NF) for less than 24 hours, the Medicaid vendor payment to the evacuating facility will not be interrupted.

E. When a NF resident is evacuated to a temporary shelter site (an unlicensed sheltering site or a licensed NF) for

greater than 24 hours, the evacuating nursing facility may submit the claim for Medicaid vendor payment for a maximum of five days, provided that the evacuating nursing facility provides sufficient staff and resources to ensure the delivery of essential care and services to the resident at the temporary shelter site.

F. When a NF resident is evacuated to a temporary shelter site, which is an unlicensed sheltering site, for greater than five days, the evacuating nursing facility may submit the claim for Medicaid vendor payment for up to an additional 15 days, provided that the evacuating nursing facility:

1. has received an extension to stay at the unlicensed shelter site; and
2. provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

G. When a NF resident is evacuated to a temporary shelter site, which is a licensed nursing home, for greater than five days, the evacuating nursing facility may submit the claim for Medicaid vendor payment for an additional period, not to exceed 55 days, provided that:

1. the host/receiving nursing home has sufficient licensed and certified bed capacity for the resident, or the host/receiving nursing home has received departmental and/or CMS

approval to exceed the licensed and certified bed capacity for a specified period; and

2. the evacuating nursing facility provides sufficient staff and resources to ensure the delivery of essential care and services to the resident, and to ensure the needs of the resident are met.

H. If a NF resident is evacuated to a temporary shelter site which is a licensed NF, the receiving/host nursing home may submit claims for Medicaid vendor payment under the following conditions:

1. beginning day 2 and continuing during the "sheltering period" and any extension period, if the evacuating nursing home does not provide sufficient staff and resources to ensure the delivery of essential care and services to the resident and to ensure the needs of the residents are met;

2. upon admission of the evacuated residents to the host/receiving nursing facility; or

3. upon obtaining approval of a temporary hardship exception from the department, if the evacuating NF is not submitting claims for Medicaid vendor payment.

I. Only one nursing facility may submit the claims and be reimbursed by the Medicaid Program for each Medicaid resident for the same date of service.

J. A nursing facility may not submit claims for Medicaid

vendor payment for non-admitted residents beyond the expiration of its extension to exceed licensed (and/or certified) bed capacity or expiration of its temporary hardship exception.

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, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

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 by ensuring continued access to nursing facility services for residents who have been evacuated during a declared disaster or emergency event.

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 by reducing the financial burden on families who may encounter expenses when family members are evacuated from nursing facilities during declared disasters or emergency events.

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.

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, December 29, 2016 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
Phone: 342-8769

Dept.: Health
Office: Bureau of Health Services
Financing

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

Rule Title: Nursing Facilities
Evacuation and Temporary
Sheltering Costs

Date Rule Takes Effect: October 13, 2016

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 have no programmatic fiscal impact to the state other than the cost of promulgation for FY 16-17. There is no anticipated net increase in vendor payments as these provisions will only clarify which facility will receive the vendor payment. It is anticipated that \$864 (\$432 SGF and \$432 FED) will be expended in FY 16-17 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)

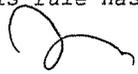
It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 16-17. It is anticipated that \$432 will be collected in FY 16-17 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed Rule continues the provisions of the October 13, 2016 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing evacuation and temporary sheltering costs to ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site. It is anticipated that implementation of this proposed rule will not have economic costs, but will be beneficial to nursing facilities for FY 16-17, FY 17-18 and FY 18-19 by ensuring continued vendor payments for services delivered during an evacuation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

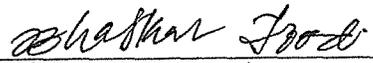
This rule has no known effect on competition and employment.



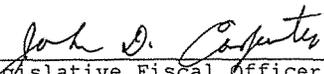
Signature of Agency Head
or Designee

Jen Steele, Medicaid Director

Typed name and Title of
Agency Head or Designee



DHH/BHSF Budget Head



Legislative Fiscal Officer
or Designee

11/10/16

Date of Signature

11/10/16

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 October 13, 2016 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing evacuation and temporary sheltering costs to ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site.

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

In compliance with the directives of Act 540 of the 2006 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for nursing facilities to provide for the facility-specific reimbursement of documented and allowable evacuation and temporary sheltering costs of Medicaid-certified nursing facilities (Louisiana Register, Volume 38, Number 5).

The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the May 20, 2008 Rule governing the reimbursement methodology for nursing facilities to amend the provisions governing evacuation and temporary sheltering costs in order to ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site when they are displaced (Louisiana Register, Volume 42, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 13, 2016 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.

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 16-17. In FY 16-17, \$864 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 16-17	FY 17-18	FY 18-19
PERSONAL SERVICES			
OPERATING EXPENSES	\$864	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$864	\$0	\$0

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 16-17, \$864 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 16-17	FY 17-18	FY 18-19
STATE GENERAL FUND	\$432	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$432	\$0	\$0
OTHER (Specify)			
Total	\$864	\$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 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 16-17	FY 17-18	FY 18-19
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$432	\$0	\$0
LOCAL FUNDS			
Total	\$432	\$0	\$0

*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.

In FY 16-17, \$432 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 October 13, 2016 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing evacuation and temporary sheltering costs to ensure that an evacuating nursing facility continues to receive vendor payments while providing essential care and services to residents at a host site.

- 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 not have economic costs, but will be beneficial to nursing facilities for FY 16-17, FY 17-18 and FY 18-19 by ensuring continued vendor payments for services delivered during an evacuation.

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.