

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Healthcare Services Provider Fees Hospital Fee Assessments (LAC 48:I.4001 and 4007)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4001 and §4007 as authorized by R.S. 36:254. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Pursuant to article VII, section 10.13 of the Constitution of Louisiana, the Louisiana legislature establishes an annual hospital stabilization formula via concurrent resolution which directs the Department of Health, Bureau of Health Services Financing to calculate, levy, and collect an assessment for each assessed hospital. In compliance with article VII, section 10.13 of the Louisiana Constitution and the Louisiana legislature concurrent resolution, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital services providers (*Louisiana Register*, Volume 48, Number 10). This proposed Rule is being promulgated to continue the provisions of the September 21, 2022 Emergency Rule.

Title 48
PUBLIC HEALTH—GENERAL
PART I. GENERAL Administration
Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. - E.3.a. ...

F. Hospital Services

1. Effective July 1, 2022, a hospital stabilization assessment fee shall be levied and collected in accordance with article VII, section 10.13 of the Constitution of Louisiana, any legislation setting forth the hospital stabilization formula, and departmental requirements relative to directed payments.

a. Subject to written approval by the Centers for Medicare and Medicaid Services (CMS) of a directed payment arrangement pursuant to 42 C.F.R. 438.6, the Department of Health shall levy and collect an assessment from those hospitals subject to the approved directed payment arrangement. Each approved directed payment arrangement is effective for one Healthy Louisiana Medicaid managed care contract rating period.

i. Prior to the levy of any assessment pursuant to this Subsection, the Department of Health shall submit a Medicaid assessment report to the Joint Legislative Committee on the Budget. The Medicaid assessment report shall include a description of the proposed assessment, the basis for

the calculation of the assessment, and a listing of each hospital included in the proposed assessment. The hospital assessment shall be calculated in accordance with the annual hospital stabilization formula set forth by the Legislature of Louisiana and enacted pursuant to article VII, section 10.13 of the Constitution of Louisiana.

ii. An assessment levied pursuant to this Subsection shall be levied only for the quarters that directed payments are actually paid to qualified hospitals pursuant to 42 C.F.R. 438.6 directed payment arrangements approved by CMS.

2. Individual hospitals subject to an assessment under this Subsection shall be obligated to pay such assessment regardless of whether a directed payment is actually paid to the hospital for the quarter for which the assessment is levied.

3. The assessment will be levied and collected on a quarterly basis and at the beginning of each quarter that the assessment is due.

4. - 5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and P.L. 102-234, R.S. 36:254, and Article VII, Section 10.13 of the Constitution of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887, 1888 (November 2016), LR 43:73 (January 2017), repromulgated LR 43:323 (February 2017), amended LR 44:1015 (June 2018), LR 44:1894 (October 2018), LR 45:1597 (November 2019), LR 49:

§4007. Delinquent and/or Unpaid Fees

A. - C. ...

D. In accordance with departmental requirements relative to directed payments, hospitals that fail to pay the assessment due, or any portion thereof, may be subject to one or more of the following:

1. exclusion from participation in any directed payment arrangement approved by the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 438.6;
2. revocation of the hospital's license; or
3. termination of the hospital's enrollment in the Medical Assistance Program (Medicaid).

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as

Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and PL 102-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:1114 (October 1994), LR 26:1479 (July 2000), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887 (November 2016), LR 44:1017 (June 2018), 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, 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 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 December 30, 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 December 12, 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 December 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 December 12, 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:	<u>Veronica Dent</u>	Dept.:	<u>Health</u>
Phone:	<u>342-3238</u>	Office:	<u>Bureau of Health Services Financing</u>
Return Address:	<u>P.O. Box 91030</u>	Rule Title:	<u>Healthcare Services Provider Fees</u>
	<u>Baton Rouge, LA</u>		<u>Hospital Fee Assessments</u>
		Date Rule Takes Effect:	<u>September 21, 2022</u>

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 state programmatic fiscal costs of approximately \$257,146,706 for FY 22-23 and \$0 for FY 23-24 and FY 24-25. The hospital fee assessment revenue generated by the proposed rule will be used in the Medicaid budget to fund rate increases and the hospital directed payment model. It is anticipated that \$756 (\$378 SGF and \$378 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)

Article VII, Section 10.13 of the Constitution of Louisiana, requires that a House Concurrent Resolution be adopted in each legislative session setting forth the hospital stabilization formula for the subsequent fiscal years. It is anticipated that implementation of this proposed rule will increase statutory dedicated revenue collections by approximately \$257,146,328 for FY 22-23 and \$0 for FY 23-24 and FY 24-25 and will increase federal revenue collections by approximately \$932,558,561 for FY 22-23 and \$0 for FY 23-24 and FY 24-25. It is anticipated that \$378 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 continues the provisions of the September 21, 2022 Emergency Rule, which amended the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital services providers, in compliance with the Louisiana Legislature concurrent resolution and pursuant to Article VII, Section 10.13 of the Constitution of Louisiana. In addition, the proposed rule adds requirements relative to hospital directed payments to the criteria for the levy and collection of the annual hospital stabilization assessment and to the provisions governing delinquent and/or unpaid fees. Implementation of this proposed rule is anticipated to increase federal and statutory dedicated revenue collections by approximately \$1,189,704,511 for FY 22-23 and \$0 for FY 23-24 and FY 24-25, as a result of the hospital stabilization assessment fee.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Agency Head or Designee

Tara A. LeBlanc, Medicaid Executive Director

Typed Name & Title of Agency Head or Designee

11/09/2022

Date of Signature



Legislative Fiscal Officer or Designee

11/9/22

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 continues the provisions of the September 21, 2022 Emergency Rule, which amended the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital services providers, in compliance with the Louisiana Legislature concurrent resolution and pursuant to Article VII, Section 10.13 of the Constitution of Louisiana. In addition, the proposed rule adds requirements relative to hospital directed payments to the criteria for the levy and collection of the annual hospital stabilization assessment and to the provisions governing delinquent and/or unpaid fees.

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

Pursuant to article VII, section 10.13 of the Constitution of Louisiana, the Louisiana legislature establishes an annual hospital stabilization formula via concurrent resolution which directs the Department of Health, Bureau of Health Services Financing to calculate, levy, and collect an assessment for each assessed hospital. In compliance with article VII, section 10.13 of the Louisiana Constitution and the Louisiana legislature concurrent resolution, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital services providers (*Louisiana Register*, Volume 48, Number 10). This proposed Rule is being promulgated to continue the provisions of the September 21, 2022 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 state programmatic fiscal costs of approximately \$257,146,814 for FY 22-23 and \$0 for FY 23-24 and FY 24-25. The hospital fee assessment revenue generated by the proposed rule will be used in the Medicaid budget to fund rate increases and the hospital directed payment model. In FY 22-23, \$756 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	\$756	\$0	\$0
Professional Services			
Other Charges	\$1,189,704,511	\$0	\$0
Equipment			
Major Repairs & Constr.			
TOTAL	\$1,189,705,267	\$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.

The hospital fee assessment revenue generated by the proposed rule will be used in the Medicaid budget to fund rate increases and the hospital directed payment model. In FY 22-23, \$756 will be spent for the state's administrative expense for promulgation of this proposed rule and final rule.

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

SOURCE	FY 23	FY 24	FY 25
State General Fund	\$378	\$0	\$0
Agency Self-Generated			
Dedicated	\$257,146,328	\$0	\$0
Federal Funds	\$932,558,561	\$0	\$0
Other (Specify)			
TOTAL	\$1,189,705,267	\$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 government 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*	\$257,146,328	\$0	\$0
Federal Funds	\$932,558,561	\$0	\$0
Local Funds			
TOTAL	\$1,189,704,889	\$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.

The amounts reflected above are the estimated increases in statutory dedicated revenue collections and federal revenue collections to the department. In FY 22-23, \$378 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 continues the provisions of the September 21, 2022 Emergency Rule, which amended the provisions governing healthcare services provider fees in order to revise the assessment methodology for hospital services providers, in compliance with the Louisiana Legislature concurrent resolution and pursuant to Article VII, Section 10.13 of the Constitution of Louisiana. In addition, the proposed rule adds requirements relative to hospital directed payments to the criteria for the levy and collection of the annual hospital stabilization assessment and to the provisions governing delinquent and/or unpaid fees.

- 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 increase federal and statutory dedicated revenue collections by approximately \$1,189,704,511 for FY 22-23 and \$0 for FY 23-24 and FY 24-25, as a result of the hospital stabilization assessment fee.

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.