

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Louisiana Low-Income Academic Hospitals
(LAC 50:V.2903 and Chapter 31)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal LAC 50:V.2903 and adopt LAC 50:V.Chapter 31 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 and Hospitals, Bureau of Health Services Financing promulgated Emergency Rules which amended the provisions governing disproportionate share hospital (DSH) payments to hospitals participating in public-private partnerships in the south and north Louisiana areas (*Louisiana Register*, Volume 39, Numbers 7 and 10). As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the corresponding Medicaid State Plan amendments, the department determined that it was necessary to repeal the provisions of the July 6, 2013 and October 1, 2013 Emergency Rules governing DSH payments to the hospitals participating in the south and north Louisiana area public-private partnerships.

The department promulgated an Emergency Rule which amended the provisions governing DSH payments in order to establish payments to Louisiana Low-Income Academic Hospitals (*Louisiana Register*, Volume 40, Number 6). The department subsequently promulgated an Emergency Rule which amended the provisions of the May 24, 2014 Emergency Rule to clarify the provisions governing the payment methodology to Louisiana Low-Income Academic Hospitals (*Louisiana Register*, Volume 40, Number 9). This proposed Rule is being promulgated to continue the provisions of the May 24, 2014 and September 20, 2014 Emergency Rules.

TITLE 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 29. Public-Private Partnerships

§2903. Reimbursement Methodology

Repealed.

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Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:2259 (November 2014), repealed LR 42:

Chapter 31. Louisiana Low-Income Academic Hospitals

§3101. Qualifying Criteria

A. Hospitals Located Outside of the Lake Charles metropolitan statistical area (MSA)

1. Effective for dates of service on or after May 24, 2014, a hospital may qualify for this category by:

a. being a private acute care general hospital that is located outside of the Lake Charles MSA;

b. having uninsured patient utilization, as measured by allowable uninsured inpatient and outpatient charges, greater than 20 percent. Qualification shall be based on uninsured utilization data per the prior state fiscal year date of service time period; and

c. maintaining at least 15 unweighted intern and resident full-time equivalent positions, as reported on the Medicare Cost Report Worksheet E-4, line 6.

B. Hospitals Located in the Lake Charles MSA

1. Effective for dates of service on or after May 24, 2014, a hospital may qualify for this category by:

a. being a private acute care general hospital that is located in the Lake Charles MSA;

b. having uninsured patient utilization, as measured by allowable uninsured inpatient and outpatient charges, greater than 10 percent. To determine qualification in state fiscal year 2014, the first six month dates of service time period (July 1, 2013 through December 31, 2013) shall be

used. In subsequent state fiscal years, qualification shall be based on uninsured utilization data per the prior state fiscal year date of service time period; and

c. maintaining at least 20 unweighted intern and resident full-time equivalent positions, as reported on the Medicare Cost Report Worksheet E-4, line 6.

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, LR 42:

§3103. Payment Methodology

A. Each qualifying hospital shall be paid DSH adjustment payments equal to 100 percent of allowable hospital specific uncompensated care costs subject to the Appropriations Act. DSH payments to qualifying hospitals shall not exceed the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable.

B. Payment Calculation

1. For the initial year's payment calculation, each qualifying hospital shall submit interim actual cost data calculated utilizing Medicaid allowable cost report principles, along with actual Medicaid and uninsured patient charge data.

Annual Medicaid costs shortfalls and unreimbursed uninsured patient costs are determined based on review and analysis of these submissions.

2. For subsequent year's payment calculations, the most recent Medicaid filed cost report along with actual Medicaid and uninsured patient charge data annualized from the most recent calendar year completed quarter is utilized to calculate hospital specific uncompensated care costs.

C. The department shall review cost data, charge data, lengths of stay and Medicaid claims data per the Medicaid Management and Information System (MMIS) for reasonableness before payments are made.

D. The first payment of each fiscal year will be made by October 15 and will be 80 percent of the annual calculated uncompensated care costs. The remainder of the payment will be made by June 30 of each year.

1. Reconciliation of these payments to actual hospital specific uncompensated care costs will be made when the cost report(s) covering the actual dates of service from the state fiscal year are filed and reviewed.

2. Additional payments or recoupments, as needed, shall be made after the finalization of the CMS mandated DSH audit for the state fiscal year.

E. No payment under this Section is dependent on any agreement or arrangement for providers or related entities to donate money or services to a governmental entity.

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, LR 42:

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 Emergency Rule has been considered. It is anticipated that this Emergency 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 J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Wednesday, November 25, 2015 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.

Kathy H. Kliebert

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing

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Rule Title: Disproportionate Share Hospital
Payments
Louisiana Low-Income Academic
Hospitals

Date Rule Takes Effect: May 24, 2014

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 the implementation of this proposed rule will result in estimated state general fund programmatic costs of \$18,495,543 for FY 15-16, \$19,285,817 for FY 16-17, and \$20,057,250 for FY 17-18. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 15-16 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.17 percent in FY 15-16. The enhanced rate of 62.11 percent for the last nine months of FY 16 is the federal rate for disaster-recovery FMAP adjustment states.

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 approximately \$30,395,419 for FY 15-16, \$31,559,997 for FY 16-17, and \$32,822,397 for FY 17-18. It is anticipated that \$378 will be expended in FY 15-16 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.17 percent in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 16 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the May 24, 2014 and September 20, 2014 Emergency Rules which amended the provisions governing disproportionate share hospital (DSH) payments in order to establish payments to Louisiana Low-Income Academic Hospitals. It is anticipated that the implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program for DSH payments by approximately \$48,890,206 for FY 15-16, \$50,845,814 for FY 16-17, and \$52,879,647 for FY 17-18.

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

J. Ruth Kennedy, Medicaid Director
Typed name and Title of
Agency Head or Designee

10/9/15

Date of Signature



DHH/BHSF Budget Head

10/8/15

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 May 24, 2014 and September 20, 2014 Emergency Rules which amended the provisions governing DSH payments in order to establish payments to Louisiana Low-Income Academic Hospitals.

- 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 and Hospitals, Bureau of Health Services Financing promulgated Emergency Rules which amended the provisions governing disproportionate share hospital (DSH) payments to hospitals participating in public-private partnerships in the south and north Louisiana areas (Louisiana Register, Volume 39, Numbers 7 and 10). As a result of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' disapproval of the corresponding State Plan Amendments, the department determined that it was necessary to repeal the provisions of the July 6, 2013 and October 1, 2013 Emergency Rules governing DSH payments to the hospitals participating in the south and north Louisiana area public-private partnerships.

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- 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.

Yes. This proposed rule will result in an increase in programmatic expenditures in the Medicaid Program by approximately \$48,890,962 for FY 15-16, \$50,845,814 for FY 16-17, and \$52,879,647 for FY 17-18. In FY 15-16, \$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) _____ If yes, attach documentation.
(b) X If no, provide justification as to why this rule change should be published at this time.

Act 16 of the 2015 Regular Session of the Louisiana Legislature allocated funds to the Department of Health and Hospitals to provide reimbursements to providers for Medicaid covered services. This rule change should be published at this time to ensure recipients will have continued access to inpatient hospital services and continued provider participation.

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 15-16 | FY 16-17 | FY 17-18 |
|-----------------------|---------------------|---------------------|---------------------|
| PERSONAL SERVICES | | | |
| OPERATING EXPENSES | \$756 | \$0 | \$0 |
| PROFESSIONAL SERVICES | | | |
| OTHER CHARGES | \$48,890,206 | \$50,845,814 | \$52,879,647 |
| REPAIR & CONSTR. | | | |
| POSITIONS (#) | | | |
| TOTAL | \$48,890,962 | \$50,845,814 | \$52,879,647 |

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 increases in programmatic costs for hospital services. In FY 15-16, \$756 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 15-16 | FY 16-17 | FY 17-18 |
|--------------------|---------------------|---------------------|---------------------|
| STATE GENERAL FUND | \$18,495,543 | \$19,285,817 | \$20,057,250 |
| SELF-GENERATED | | | |
| FEDERAL FUND | \$30,395,419 | \$31,559,997 | \$32,822,397 |
| OTHER (Specify) | | | |
| Total | \$48,890,962 | \$50,845,814 | \$52,879,647 |

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 15-16 | FY 16-17 | FY 17-18 |
|------------------------------|---------------------|---------------------|---------------------|
| STATE GENERAL FUND | | | |
| AGENCY SELF-GENERATED | | | |
| RESTRICTED FUNDS* | | | |
| FEDERAL FUNDS | \$30,395,419 | \$31,559,997 | \$32,822,397 |
| LOCAL FUNDS | | | |
| Total | \$30,395,419 | \$31,559,997 | \$32,822,397 |

**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 increases in the federal share of Medicaid Program expenditures for hospital services. In FY 15-16, \$378 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 May 24, 2014 and September 20, 2014 Emergency Rules which amended the provisions governing DSH payments in order to establish payments to Louisiana Low-Income Academic Hospitals.

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

It is anticipated that the implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program for DSH payments by approximately \$48,890,206 for FY 15-16, \$50,845,814 for FY 16-17, and \$52,879,647 for FY 17-18.

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.