

## NOTICE OF INTENT

Department of Health and Hospitals  
Bureau of Health Services Financing

Nursing Facilities  
Non-State Governmental Organizations  
Supplemental Payments  
(LAC 50:II.20029)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 50:II.20029 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 provides Medicaid reimbursement to non-state, government-owned or operated nursing facilities for long-term care services provided to Medicaid recipients.

The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to establish supplemental Medicaid payments for qualifying nursing facilities, owned or operated by a non-state governmental organization (NSGO), that have entered into an agreement with the department to participate. This action is being taken to promote the health and welfare of Medicaid recipients, ensure sufficient provider participation in the Nursing Facilities Program, and maintain adequate recipient access to nursing facility services.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part II. Nursing Facilities**

##### **Subpart 5. Reimbursement**

#### **Chapter 200. Reimbursement Methodology**

##### **§20029. Supplemental Payments**

###### **A. Non-State Governmental Organization Nursing Facilities**

1. Effective for dates of service on or after January 20, 2016, any nursing facility that is owned or operated by a non-state governmental organization (NSGO), and that has entered into an agreement with the Department to participate, shall qualify for a Medicaid supplemental payment adjustment, in addition to the uniform Medicaid rates paid to nursing facilities. The only qualifying nursing facilities effective for January 20, 2016 are:

- a. Gueydan Memorial Guest Home;
- b. Lane Memorial Hospital Geriatric Long-Term  
Care (LTC);
- c. LaSalle Nursing Home;
- d. Natchitoches Parish Hospital LTC Unit; and
- e. St. Helena Parish Nursing Home.

2. The supplemental Medicaid payment to a non-state, government-owned or operated nursing facility shall not exceed the facility's upper payment limit (UPL) pursuant to 42 CFR 447.272.

3. Payment Calculations. The Medicaid supplemental payment adjustment shall be calculated as follows. For each state

fiscal year (SFY), the Medicaid supplemental payment shall be calculated as the difference between:

a. the amount that the department reasonably estimates would have been paid to nursing facilities that are owned or operated by a NSGO using the Medicare Resource Utilization Groups (RUGs) prospective payment system. For each Medicaid resident that is in a nursing facility on the last day of a calendar quarter, the minimum data set (MDS) assessment that is in effect on that date is classified using the Medicare RUGs system. The Medicare rate applicable to the Medicare RUG, adjusted by the Medicare geographic wage index, equals the Medicaid resident's estimated Medicare rate. A simple average Medicare rate is determined for each nursing facility by summing the estimated Medicare rate for each Medicaid resident in the facility and dividing by total Medicaid residents in the facility; and

b. the Medicaid per diem rate for nursing facilities that are owned or operated by a NSGO. The Medicaid rate shall be adjusted to include laboratory, radiology, and pharmacy services to account for program differences in services between Medicaid and Medicare. The statewide average of laboratory, radiology, and pharmacy services is calculated using Medicaid cost report data.

4. Each participating nursing facility's upper payment limit (UPL) gap shall be determined as the difference between the estimated Medicare rate calculated in §20029.A.3.a and the adjusted Medicaid rate calculated in §20029.A.3.b.

a. Each facility's UPL gap is multiplied by the Medicaid days to arrive at its supplemental payment amount. Medicaid days are taken from the Medicaid cost report.

5. Frequency of Payments and Calculations

a. For each calendar quarter, an estimated interim supplemental payment will be calculated as described in this Section utilizing the latest Medicare RUGs and payment rates and Medicaid cost reports and available Medicaid payment rates. Payments will be made to each nursing facility that is owned or operated by a NSGO and that has entered into an agreement with the department to participate in the supplemental payment program.

b. Following the completion of the state's fiscal year, the final supplemental payment amount for the state fiscal year just ended will be calculated. These calculations will be based on the final Medicare RUGs and payment rates and the most recently reviewed Medicaid cost reports and Medicaid payment rates that cover the just ended state fiscal year period. The final supplemental payment calculations will be compared to the estimated interim supplemental payments, and the difference, if positive, will be paid to the NSGO, and if negative, collected from the NSGO.

6. No payment under this Section is dependent on any agreement or arrangement for provider 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:

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 no impact on family functioning, stability and 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 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, but may reduce the total direct and

indirect cost to the provider to provide the same level of service and enhance the provider's ability to provide the same level of service since this proposed Rule establishes supplemental payments to providers for the same services they already render.

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](mailto: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

Statement: Kaylin Haynes  
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Dept.: Health and Hospitals  
Office: Bureau of Health Services  
Financing

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Address: Baton Rouge, LA

Rule Title: Nursing Facilities  
Non-State Governmental  
Payments

Date Rule Takes Effect: January 20, 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 the implementation of this proposed rule will result in estimated state general fund programmatic costs of \$145,642 for FY 15-16, \$749,032 for FY 16-17 and \$749,032 for FY 17-18; however the state match shall be met through an IGT financing arrangement whereby qualifying providers shall transfer to the department funds to secure federal match in order to fund the payments for these nursing facility services. It is anticipated that \$648 (\$324 SGF and \$324 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 and 62.07 percent in FY 16-17 and FY 17-18.*

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 \$239,140 for FY 15-16, \$1,225,743 for FY 16-17 and \$1,225,743 for FY 17-18. It is anticipated that \$216 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 and 62.07 percent in FY 16-17 and FY 17-18.*

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

*This proposed rule amends the provisions governing the reimbursement methodology for nursing facilities in order to establish supplemental payments for qualifying nursing facilities owned or operated by non-state governmental organizations (NSGOs) that enter into an agreement with the department to participate (5 nursing facilities). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program for nursing facility services by approximately \$384,134 for FY 15-16, \$1,974,775 for FY 16-17 and \$1,974,775 for FY 17-18.*

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a positive effect on employment as it will provide additional payments to nursing facilities. The additional payments may improve their financial standing and could possible cause an increase in employment opportunities.

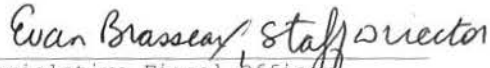


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Signature of Agency Head  
or Designee

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



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DHH/BHSF Budget Head



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Legislative Fiscal Officer  
or Designee

10/9/15

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Date of Signature

10/8/15

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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).

*The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to establish supplemental payments for qualifying nursing facilities owned or operated by NSGOs that enter into an agreement with the department.*

- 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 provides Medicaid reimbursement to non-state, government-owned or operated nursing facilities for long-term care services provided to Medicaid recipients.*

*The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to establish supplemental Medicaid payments for qualifying nursing facilities, owned or operated by a non-state governmental organization (NSGO), that have entered into an agreement with the department to participate. This action is being taken to promote the health and welfare of Medicaid recipients, ensure sufficient provider participation in the Nursing Facilities Program, and maintain adequate recipient access to nursing facility services.*

- 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 \$384,782 for FY 15-16, \$1,974,775 for FY 16-17 and \$1,974,775 for FY 17-18. In FY 15-16, \$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) ☐ If yes, attach documentation.  
(b) ☒ 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 proposed rule should be published at this time to ensure recipients will have continued access to nursing facility services by allowing the State to maximize funding for nursing facility services by securing new federal revenue to fund an IGT financing mechanism with qualifying providers in order to encourage 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	\$648	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES	\$384,134	\$1,974,775	\$1,974,775
REPAIR & CONSTR.			
POSITIONS (#)			
<b>TOTAL</b>	<b>\$384,782</b>	<b>\$1,974,775</b>	<b>\$1,974,775</b>

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 expenditures for nursing facility services. In FY 15-16, \$648 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			
SELF-GENERATED	\$145,642	\$749,032	\$749,032
FEDERAL FUND	\$239,140	\$1,225,743	\$1,225,743
OTHER (Specify)			
<b>Total</b>	<b>\$384,782</b>	<b>\$1,974,775</b>	<b>\$1,974,775</b>

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	\$145,642	\$749,032	\$749,032
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$239,140	\$1,225,743	\$1,225,743
LOCAL FUNDS			
<b>Total</b>	<b>\$384,782</b>	<b>\$1,974,775</b>	<b>\$1,974,775</b>

\*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 program expenditures for nursing facility services and self-generated revenue from the IGT financing arrangements. In FY 15-16, \$324 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.)

*The department now proposes to amend the provisions governing the reimbursement methodology for nursing facilities in order to establish supplemental payments for qualifying nursing facilities owned or operated by non-state governmental organizations (NSGOs) that enter into an agreement with the department to participate (5 nursing facilities).*

- 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 increase programmatic expenditures in the Medicaid Program for nursing facility services by approximately \$384,134 for FY 15-16, \$1,974,775 for FY 16-17 and \$1,974,775 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.

*It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a positive effect on employment as it will provide additional payments to nursing facilities. The additional payments may improve their financial standing and could possible cause an increase in employment opportunities.*