

**NOTICE OF INTENT**

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

**Nursing Facilities  
Optional State Assessment  
(LAC 50:II.10123 and 20001)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.10123 and §20001 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 46:2742 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.

Due to the Coronavirus Disease 2019 (COVID-19) public health emergency, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) delayed the requirement for states to transition from the current resource utilization group (RUG-III/RUG-IV) case-mix classification model used under the Medicare skilled nursing facility prospective payment system to the patient driven payment model until October 1, 2023. In compliance with CMS requirements, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the standards for payment and reimbursement for nursing facilities in order to implement the

patient driven payment model for case-mix classification and mandate use of the optional state assessment item set (*Louisiana Register*, Volume 49, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 1, 2023 Emergency Rule.

**Title 50  
PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part II. Nursing Facilities  
Subpart 3. Standards for Payment**

**Chapter 101. Standards for Payment for Nursing Facilities**

**Subchapter D. Resident Care Services**

**§10123. Comprehensive Assessment**

A. - G.4.c. ...

H. Effective for assessments with assessment reference dates of October 1, 2023 and after, the department mandates the use of the optional state assessment (OSA) item set. The OSA item set is required to be completed in conjunction with each assessment and at each assessment interval detailed within this Section. The OSA item set must have an assessment reference date that is identical to that of the assessment it was performed in conjunction with.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 46:2742.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 22:34 (January 1996), amended by the Department of Health, Bureau of Health Services Financing, LR 46:695 (May 2020), LR 46:1684 (December 2020), LR 50:

**Subpart 5. Reimbursement**

**Chapter 200. Reimbursement Methodology**

**§20001. General Provisions**

**A. Definitions**

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*Minimum Data Set (MDS)*—a core set of screening and assessment data, including common definitions and coding categories that form the foundation of the comprehensive assessment for all residents of long-term care nursing facility providers certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within nursing facility providers, between nursing facility providers, and between nursing facility providers and outside agencies. The Louisiana system will employ the current required MDS assessment as approved by the Centers for Medicare and Medicaid Services (CMS), or as mandated by the Department of Health through the use of the optional state assessment (OSA).

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*Optional State Assessment (OSA)*—assessment required by Louisiana Medicaid to report on Medicaid-covered stays. Allows

nursing facility providers using RUG-III or RUG-IV models as the basis for Medicaid payment to do so until the legacy payment model (RUG-III) ends.

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*Patient Driven Payment Model (PDPM)*—the proposed new Medicare payment rule for skilled nursing facilities. The PDPM identifies and adjusts different case-mix components for the varied needs and characteristics of a resident's care and then combines these with a non-case-mix component to determine the full skilled nursing facilities (SNF) prospective payment system (PPS) per diem rate for that resident.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, 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 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1522 (September 2016), LR 43:525 (March 2017), LR 43:2187 (November 2017), LR 46:695 (May 2020), LR 46:1684 (December 2020), LR 50:

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 Kimberly Sullivan, JD, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. Sullivan is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on November 29, 2023.

#### **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 November 9, 2023. 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 November 28, 2023 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 November 9, 2023. 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.

Stephen R. Russo, JD

Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

Person Preparing Statement:	<u>Lyrica Johnson</u>	Dept.:	<u>Health</u>
Phone:	<u>342-6375</u>	Office:	<u>Bureau of Health Services Financing</u>
Return Address:	<u>P.O. Box 91030</u>	Rule Title:	<u>Nursing Facilities</u>
	<u>Baton Rouge LA</u>		<u>Optional State Assessment</u>
		Date Rule Takes Effect:	<u>October 1, 2023</u>

**SUMMARY**  
(Use complete sentences)

In accordance with Section 961 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 of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 23-24. It is anticipated that \$756 (\$378 SCF and \$378 FED) will be expended in FY 23-24 for the state's administrative expense for promulgation of this proposed rule and the final rule.

This proposed rule continues the provisions of the October 1, 2023 Emergency Rule, which amended the standards for payment and reimbursement for nursing facilities in order to implement the required transition from the current RUG-III/RUG-IV case-mix classification model used under the Medicare skilled nursing facility prospective payment system to the patient driven payment model (PDPM) which was delayed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) until October 1, 2023 due to the COVID-19 public health emergency.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 23-24. It is anticipated that \$378 will be collected in FY 23-24 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 October 1, 2023 Emergency Rule, which amended the standards for payment and reimbursement for nursing facilities in order to implement the required transition from the current RUG-III/RUG-IV case-mix classification model used under the Medicare skilled nursing facility prospective payment system to the patient driven payment model (PDPM) which was delayed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) until October 1, 2023 due to the COVID-19 public health emergency. The proposed rule implements the PDPM case-mix classification model for skilled nursing facilities and mandates use of the optional state assessment item set. It is anticipated that implementation of this proposed rule will not result in costs or benefits to nursing facility providers or small businesses in FY 23-24, FY 24-25, and FY 25-26.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.



Signature of Head or Designee

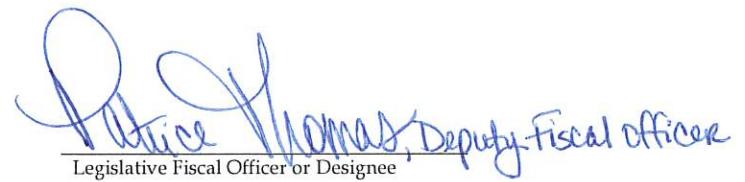
Kimberly Sullivan, JD

Interim Medicaid Executive Director

Typed Name & Title of Agency Head or Designee

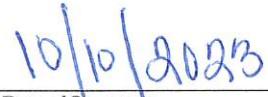
10/10/2023

Date of Signature



Prince Thomas, Deputy Fiscal Officer

Legislative Fiscal Officer or Designee



10/10/2023

Date of Signature