



State of Louisiana
Louisiana Department of Health
Office of the Secretary

January 8, 2021

Via Statutorily Prescribed Email

To: The Honorable Fred H. Mills, Jr., Chairman, Senate Health & Welfare Committee
The Honorable Larry Bagley, Chairman, House Health & Welfare Committee

From: Dr. Courtney N. Phillips
Secretary

Re: Second Report on Proposed Amendments to LAC 50:XIX.Chapters 39, 41, and 43
– Laboratory and Radiology Services

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Laboratory and Radiology Services rule amendment.

A Notice of Intent on the proposed amendments was published in the November 20, 2020 issue of the *Louisiana Register* (LR 46:1624). No written comments were received and there was no request for a public hearing were received during the notice period. Because there were no requests for a public hearing, one was not held for these proposed amendments. Additionally, no substantive changes were made to the proposed amendments since the report provide for in R.S. 49:968B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the November 20, 2020, Notice of Intent when it is published as a final rule in the February 20, 2021, issue of the *Louisiana Register*.

Please contact Marcus Bachhuber, MD, at marcus.bachhuber@la.gov, if you have any questions or require additional information about this matter.

Cc: Kelly Zimmerman, LDH Interim Deputy Medicaid Director
Jennifer Katzman, LDH Interim Senior Staff Advisor
Marcus Bachhuber, MD, LDH Medicaid Program Manager
Veronica Dent, LDH Medicaid Program Manager
Anita Dupuy, LDH Legislative Liaison
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT
Department of Health
Bureau of Health Services Financing

Laboratory and Radiology Services
(LAC 50:XIX.Chapters 39, 41, and 43)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XIX.Chapter 39 and amend Chapters 41 and 43 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, Bureau of Health Services Financing proposes to amend the provisions governing laboratory and radiology services in order to ensure that the existing language reflects current practices, remove coding and billing instructions and other extraneous information from the administrative Rule, and promulgate these provisions clearly and accurately in the *Louisiana Administrative Code*.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIX. Other Healthcare Services

Subpart 3. Laboratory and Radiology Services

Chapter 39. General Provisions

§3901. Introduction

A. The Medicaid Program covers medically necessary laboratory and radiology services that are ordered by a physician or other licensed practitioner acting within their scope of practice and:

1. provided by or under the direction of, a physician or other licensed practitioner acting within their scope or practice; or

2. provided by an independent laboratory.

B. This Subpart only applies to laboratory and radiology services provided:

1. in an office or similar facility other than a hospital outpatient department or clinic; or

2. in an independent laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:

§3903. Service Limitations

A. Providers may only furnish laboratory services for which they are certified under the clinical laboratory improvement amendments.

B. Providers may only receive reimbursements for services that they personally perform or supervise.

C. Effective for dates of service on or after February 20, 2018, the Medicaid Program terminates coverage of proton beam radiation therapy for beneficiaries 21 years of age and older.

1. For beneficiaries under the age of 21, coverage shall be provided when proton beam radiation therapy services are deemed medically necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:

Chapter 41. Provider Participation

§4101. Physicians and Other Licensed Practitioners
Office Services

A. Physicians and other licensed practitioners must comply with all applicable state and federal laws and regulations.

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:75 (February 1982), repromulgated LR 28:1023 (May 2002), amended by the Department of Health, Bureau of Health Services Financing, LR 47:

§4103. Independent Laboratories

A. Independent laboratories are freestanding laboratory facilities that are independent of the ordering provider, hospital, or both.

B. Independent laboratories must be licensed in accordance with state laws and regulations.

C. Independent laboratories must comply with all applicable state and federal laws and regulations.

D. Independent laboratories must maintain copies of all laboratory orders and laboratory results for a period of at least five years. Records shall be retained in the laboratory in such a manner that permits ready identification and accessibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 47:

Chapter 43. Reimbursement

§4301. Laboratory Services Reimbursement

Methodology

A. Providers shall be reimbursed according to the established fee schedule or billed charges, whichever is the lesser.

B. Reimbursement for laboratory services shall not exceed 100 percent of the current year's Region 99 Medicare fee.

C. For newly added laboratory services, the Medicare fee shall be set at 75 percent of the current year's Region 99 Medicare allowable fee.

1. If there is no corresponding Medicare fee, the Medicaid fee shall be set based on a review of Medicaid Program fees in other states, other health insurer fees in Louisiana, or as determined by either the Louisiana Medicaid Medical Director or the contracted physician consultant of the Department of Health's fiscal intermediary.

2. Laboratory services related to a declared public health emergency may be reimbursed at up to 100 percent of the Region 99 Medicare allowable fee if deemed necessary by the Medicaid Program to ensure access.

D. Effective for dates of service on or after February 26, 2009, the reimbursement rates for laboratory services shall be reduced by 3.5 percent of the fee amounts on file as of February 25, 2009.

E. Effective for dates of service on or after August 4, 2009, the reimbursement rates for laboratory services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 2009.

F. Effective for dates of services on or after January 22, 2010, the reimbursement rates for laboratory services shall

be reduced by 4.42 percent of the fee amounts on files as of January 21, 2010.

G. Effective for dates of service on or after August 1, 2010, the reimbursement rates for laboratory services shall be reduced by 4.6 percent of the fee amounts on file as of July 31, 2010.

H. Effective for dates of service on or after January 1, 2011, the reimbursement rates for laboratory services shall be reduced by 2 percent of the fee amount on file as of December 31, 2010.

I. Effective for dates of service on or after July 1, 2012, the reimbursement rates for laboratory services shall be reduced by 3.7 percent of the fee amounts on file as of June 30, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), P.L. 98-369, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 5:388 (December 1979), amended LR 8:75 (February 1982), LR 8:144 (March 1982), LR 10:1034 (December 1984), LR 12:679 (October 1986), LR 22:107 (February 1996), repromulgated (for LAC) LR 28:1024 (May 2002), amended by the Department of Health, Bureau of Health Services Financing, LR 47:

§4303. Provider Claim Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 5:388 (December 1979), amended LR 10:599 (August 1984), LR 13:578 (October 1987), repromulgated (for LAC) LR 28:1024 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4305. Automated, Multichannel Test and Panel Billing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:75 (February 1982), amended LR 10:1034 (December 1984), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:219 (March 1996), repromulgated (for LAC) LR 28:1024 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4307. Hepatic Function Panel and General Health Panel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), 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 22:219 (March 1996), repromulgated (for LAC) LR 28:1024 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4309. Hematology

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), 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 22:219 (March 1996), repromulgated (for LAC) LR 28:1024 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4311. Panel Codes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), 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 22:219 (March 1996), repromulgated (for LAC) LR 28:1025 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4313. Prenatal Lab Panel Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), 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 22:219 (March 1996), repromulgated (for LAC) LR 28:1025 (May 2002), amended LR 29:1485 (August 2003), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4315. Urinalysis

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), 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 22:219 (March 1996), repromulgated (for LAC) LR 28:1025 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4317. Panels and Component Codes within Panels

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 49:1008(A), 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 22:219 (March 1996), repromulgated (for LAC) LR 28:1024 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4319. X-Ray Equipment Portage Billing

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, Office of the Secretary, Bureau of Health Services Financing, LR 30:1026 (May 2004), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), P.L. 98-369, 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 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:3028 (October 2011), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:95 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:1284 (May 2013), LR 41:539 (March 2015), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4331. Medicare Part B

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, R.S. 49:1008(A), P.L. 98-369, 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 26:2622 (November 2000), repromulgated (for LAC) LR 28:1025 (May 2002), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4333. Outpatient Hospital Laboratory Services Reimbursement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 Service Financing, LR 23:414 (April 1997), promulgated (for inclusion in the LAC) LR 28:1026 (May 2002), amended LR 29:1096 (July 2003), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4334. Radiology Services Reimbursement Methodology

A. This reimbursement methodology applies to radiology services including portable x-ray and radiation therapy center services.

B. Providers shall be reimbursed according to the established fee schedule or billed charges, whichever is the lesser amount.

C. For newly added radiology services, the Medicaid fee shall be set at 75 percent of the current year's Region 99 Medicare allowable fee.

1. If there is no corresponding Medicare fee, the Medicare fee shall be set based on a review of Medicaid Program fees in other states, other health insurer fees in Louisiana, or as determined by either the Louisiana Medicaid Medical Director or the contracted physician consultant of the Department of Health's fiscal intermediary.

D. Repealed.

E. - J. ...

K. - L.1. 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 35:1897 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:3029 (October 2011), LR 39:1284 (May 2013), LR 41:539 (March 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:283 (February 2018), amended by the Department of Health, Bureau of Health Services Financing, LR 47:

§4335. Portable Radiology Services

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 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:3029 (October 2011), LR 39:1284 (May 2013), LR 41:540 (March 2015), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

§4337. Radiation Therapy Centers

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 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:3029 (October 2011), LR 39:1284 (May 2013), LR 41:540 (March 2015), repealed by the Department of Health, Bureau of Health Services Financing, LR 47:

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 Act 820 of the 2008 Regular Session of the Louisiana Legislature, 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, as described in R.S. 49:965.2 et seq.

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, 2020.

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 10, 2020. 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, 2020 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 10, 2020. 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

RULE TITLE: Laboratory and Radiology Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT 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 20-21. It is anticipated that \$1,944 (\$972 SGF and \$972 FED) will be expended in FY 20-21 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 have no effect on revenue collections other than the federal share of the promulgation costs for FY 20-21. It is anticipated that \$972 will be collected in FY 20-21 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 NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing laboratory and radiology services in order to ensure that the existing language reflects current practices, remove coding and billing instructions and other extraneous information from the administrative Rule, and promulgate these provisions clearly and accurately in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will not result in an increase or decrease in payments for laboratory and radiology services in FY 20-21, FY 21-22 and FY 22-23, but will be beneficial by providing accurate and clearly identified program requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Ruth Johnson
Medicaid Executive Director
2011#045

Christopher A. Keaton
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Board of Pardons

General Provisions

(LAC 22:V.Chapters 2 and XI.Chapters 1, 5, and 7)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons hereby gives notice of its intent to amend its rules of LAC 22: XI:

402, 403, 121, 501, 504, 513, 514 and 705. These proposed rule changes provide technical adjustment for regular parole and revise procedures. Section 102 provides clarification for notifying victims and their next of kin. Section 103 the structure of the Board of Pardons, Committee on Parole and the participation of the ex officio member. Section 121 allows the Executive Director to speak on behalf of the Chairman in their absence. Section 501 adds the five-member panel as an option for hearings. Section 504 and 513 outline additional procedures for screening, removing or rescinding offenders who have disciplinary issues prior to a hearing or after a decision to grant parole but prior to release. Section 514 provides additional guidance for votes required in various situations. Section 705 streamlines the Rehearing Application Process and strengthens the Committee's abilities to remove offenders with poor disciplinary conduct who are not good candidates for early release.

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons hereby gives notice of its intent to amend its rules of LAC 22: V: 203, 205 and 211. Section 203 removes the condition of employment from pardon eligibility in the event the offender is unable to work due to medical and/or mental health issues. Section 205 provides instruction on accepting clemency applications online. Section 211 clarifies the vote need related to a clemency recommendation.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part V. Board of Pardons

Chapter 2. — Clemency

§203. — Eligibility for Clemency Consideration

A. C.2. —

3. An incarcerated offender who is not serving a life sentence, but who is serving a sentence for a violent offense as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, may request a commutation of sentence:

a. after having served a minimum of 10 years;

b. must have been disciplinary report free for a period of at least 24 months prior to the date of the application or at the time of the hearing (if a hearing is granted); and

c. must not be classified to a maximum custody status at the time of the application or at the time of the hearing (if a hearing is granted); and

d. must possess a marketable job skill, either through previous employment history or through successful completion of vocational training while incarcerated, unless deemed unable to work due to medical or mental health condition.

D. Life Sentences. An offender sentenced to life may not apply until he has served 15 years from the date of sentence, unless he has sufficient evidence which would have caused him to have been found not guilty. The 15 years shall include periods of time prior to the imposition of the sentence in which the defendant was in actual custody for the offense for which he was sentenced to life imprisonment. The offender must also meet the criteria stated in Subparagraphs C.3.a-d of this Section.