



State of Louisiana
Louisiana Department of Health
Office of the Secretary

April 10, 2023

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
The Honorable Mack "Bodi" White, Chairman, Senate Finance Committee
The Honorable Jerome Zeringue, Chairman, House Appropriations Committee

From: Stephen R. Russo
Secretary

Re: Second Report to LAC 50:XIII.801 – Home Health Program – America Rescue Plan Act Funding

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Home Health Program – America Rescue Plan Act Funding, LAC 50:XIII.801.

A Notice of Intent on the proposed amendments was published in the February 20, 2022 issue of the *Louisiana Register* (LR 49:371). 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2022, Notice of Intent when it is published as a final rule in the May 20, 2023, issue of the *Louisiana Register*.

Please contact Justin Owens, Justin.Owens@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Kolynda Parker, Medicaid Deputy Director, LDH
Brandon Bueche, Medicaid Program Manager, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Home Health Program
American Rescue Plan Act Funding
(LAC 50:XIII.801)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.Chapter 8 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the Department of Health's administration and payment model for funds provided under section 9817 of the American Rescue Plan Act of 2021 (ARPA) to agencies that provide home health care services. In compliance with the CMS-approved model for administering ARPA funds, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions governing ARPA funding in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health services to

beneficiaries under the age of 21 who are in a Medicaid waiver program (*Louisiana Register*, Volume 49, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 10, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—GENERAL

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 8. American Rescue Plan Act Funding

§801. Nursing Recruitment and Retention Payments

A. General Provisions

1. Nurses that provide extended home health (EHH) services may be eligible to receive recruitment and retention bonuses through April 2024.

2. A nurse is defined as an individual who possesses and maintains a valid license as a licensed practical nurse (LPN) or registered nurse (RN).

3. All payments shall be administered by the home health agency (HHA) that employs the nurse. If a nurse is employed at multiple agencies, only one HHA may pay the recruitment and retention payment.

4. HHAs shall submit an invoice and supporting documentation for each nurse that meets the requirements outlined in this Chapter on a monthly basis and shall comply with all other requirements established by LDH to receive a payment.

5. HHAs shall disburse the entire payment to the nurse and are prohibited from reducing the payment in any way.

6. HHAs that provide the required documentation, comply with all applicable requirements, and have at least one nurse a month receiving a bonus payment will be eligible to invoice LDH for an administrative fee of \$2,500 each month.

B. Recruitment

1. Recruitment is the hiring of a new nurse who commits to providing a minimum of 120 hours of EHH services to beneficiaries under the age of 21 who are in a Medicaid waiver program in each calendar month.

2. A one-time, lump sum payment of \$5,000 may be paid to any nurse who is hired by the HHA and commits to providing a minimum of 120 hours of EHH services to beneficiaries in a waiver program and has not received the retention lump sum bonus payment outlined in this Chapter.

3. Each nurse may only receive the lump sum recruitment bonus payment once.

C. Retention

1. Existing nurses who commit to providing a minimum of 120 hours of EHH services to eligible waiver beneficiaries in a calendar month and have not received the recruitment or retention lump sum bonus payment will receive a \$5,000 retention bonus.

2. Nurses who receive the recruitment or retention lump sum bonus payment shall be eligible to receive a monthly payment of \$200 if they provided at least 120 hours of EHH services to eligible waiver beneficiaries during the previous calendar month.

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, Bureau of Health Services Financing, 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 may have a positive impact on small businesses as described in the Act as it provides an administrative fee to home health agencies to make the recruitment and retention payments.

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 and 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 since this proposed Rule provides an administrative fee to the home health agencies to make the recruitment and retention payments.

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 April 3, 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 March 13, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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. 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: Home Health Program
American Rescue Plan Act Funding**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
It is anticipated that implementation of this proposed rule will result in estimated programmatic costs of approximately \$961,128 for FY 22-23 and \$2,883,750 for FY 23-24. 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 and final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will increase federal revenue collections by approximately \$961,128 for FY 22-23 and \$2,883,750 for FY 23-24. It is anticipated that \$378 will be collected for the federal share of the expense for promulgation of the proposed and final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed rule continues the provisions of the January 10, 2023 Emergency Rule, which adopted provisions in the Home Health Program in order to establish recruitment and retention payments for nurses that provide extended home health (EHH) services to beneficiaries under the age of 21 who are in a Medicaid waiver program. The proposed rule complies with the Department's administration and payment model that was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for funds provided under Section 9817 of the American Rescue Plan Act of 2021. This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses which ensures that pediatric Medicaid waiver participants continue to receive EHH services. Implementation of this proposed rule is anticipated to increase expenditures for home health services by approximately \$1,921,500 for FY 22-23 and \$5,767,500 for FY 23-24.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule provides an administrative fee to home health agencies to make recruitment and retention payments to nurses that provide extended home health services to pediatric Medicaid waiver participants.

Tara A. LeBlanc
Medicaid Executive Director
2302#066

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

April 10, 2023

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: Stephen R. Russo
Secretary

Re: Second Report LAC 50:XIII.Chapter 1 – Home Health Program – Authorizing Authority and Emergency Provisions

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the proposed Home Health Program – Authorizing Authority and Emergency Provisions, LAC 50:XIII.Chapter 1.

A Notice of Intent on the proposed amendments was published in the February 20, 2023 issue of the *Louisiana Register* (LR 49:373). Written comments were received, however, the proposed rule revisions were not revised per the comments. 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2023, Notice of Intent when it is published as a final rule in the May 20, 2023, issue of the *Louisiana Register*.

Please contact Cynthia York, at Cynthia.York@la.gov, if you have any questions or require additional information about this matter.

Cc: Tasheka Dukes, RN, HSS Assistant Secretary, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Home Health Program
Authorizing Authority and Emergency Provisions
(LAC 50:XIII.Chapter 1)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.Chapter 1 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.

Act 181 of the 2021 Regular Session of the Louisiana Legislature directed the Department of Health to add nurse practitioners, clinical nurse specialists, and physician assistants as healthcare providers authorized to order home health services. In compliance with Act 181, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing the Home Health Program in order to add nurse practitioners, clinical nurse specialists, and physician assistants as healthcare providers authorized to order home health services and to repeal emergency provisions that are no longer applicable as a result of this change. In addition, this proposed Rule modifies the locations in which home health services may be provided to be consistent with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirements.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 1. General Provisions

§101. Definitions

[Formerly LAC 50:XIX.101]

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

Authorized Healthcare Provider—a physician, nurse practitioner, clinical nurse specialist, or physician assistant licensed, certified, registered, or otherwise authorized to order home healthcare services consistent with Louisiana law.

* * *

Home Health Services—patient care services provided in the patient's home or place of residence under the order of an authorized healthcare provider that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

a. - e. ...

f. medical supplies, equipment and appliances suitable for use in the patient's home or place of residence.

* * *

Physical Therapy Services—rehabilitative services necessary for the treatment of the patient's illness or injury or, restoration and maintenance of function affected by the patient's illness or injury. These services are provided with the expectation, based on the authorized healthcare provider's assessment of the patient's rehabilitative potential, that:

a. - b. ...

Place of Residence—location where normal life activities take place but does not include a hospital, intermediate care facility for individuals with intellectual disabilities, or any setting in which payment is or could be made under Medicaid for inpatient services that include room and board.

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 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:59 (January 2018), LR 49:

§103. Requirements for Home Health Services **[Formerly LAC 50:XIX.103]**

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's home or place of residence. For initial ordering of home health services, the authorized healthcare provider must document a face-to-face encounter that is related to the primary reason the recipient requires home health services. This face-to-face encounter must occur no more than 90 days before or 30 days after the start of services. For the initial ordering of medical supplies, equipment and appliances, the authorized healthcare provider must document that a face-to-face encounter that is related to the primary reason the recipient requires medical equipment occurred no more than six months prior to the start of services. A written plan of care for services shall be evaluated and signed by the authorized healthcare provider every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Home health services shall be provided in the recipient's home or place of residence.

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 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:59 (January 2018), LR 49:

§104. Emergency Provisions

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, Bureau of Health Services Financing, LR 48:2293 (September 2022), 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 may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by reducing the waiting time to receive an order for home health services.

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. 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 April 3, 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 March 13, 2023. If criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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. 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: Home Health Program
Authorizing Authority and Emergency Provisions**

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 22-23. It is anticipated that \$864 (\$432 SGF and \$432 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)

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 22-23. It is anticipated that \$432 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 OR NONGOVERNMENTAL GROUPS (Summary)

In compliance with Act 181 of the 2021 Regular Session of the Louisiana Legislature, this proposed rule amends the provisions governing the Home Health Program in order to add nurse practitioners, clinical nurse specialists, and physician assistants as healthcare providers authorized to order home health services and to repeal emergency provisions that are no longer applicable as a result of this change. In addition, this proposed rule modifies the locations in which home health services may be provided to be consistent with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirements. This proposed rule will benefit Medicaid beneficiaries by ensuring access to home health services in more locations and reducing the waiting time to receive an order for home health services. It is anticipated that implementation of this proposed rule will not result in costs to home health providers in FY 22-23, FY 23-24, and FY 24-25, but will be beneficial by ensuring that additional healthcare providers are authorized to order services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#067

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

SUMMARY OF WRITTEN COMMENTS

Proposed Rule: Home Health Program — Authorizing Authority and Emergency Provisions

Public Hearing Date: N/A

Docket No. : N/A

Conducted By: N/A

Written Comments Received From	Mode of Receipt	Summary of Comments
Frank Harrington, Director of Reimbursement and Regulatory Affairs, American Association of Nurse Practitioners	Via email to Medicaid Executive Director	<ul style="list-style-type: none"> • Appreciates that the department has taken swift action to implement Act 181 of the 2021 Regular Session of the Louisiana Legislature. • The proposed rule changes will help ensure that home health agencies are able to accept orders for home health services from all qualified health care providers, increasing access to care for these vital services. • Supports the provisions included within this proposed rule and strongly encourages the department to work with the relevant agencies to update LAC Title 48, Part V, subpart 9 “home health services”, chapters 27 and 29.

Veronica Dent

From: Brandon Bueche
Sent: Monday, April 10, 2023 9:03 AM
To: fharrington@aanp.org; ahorgan@aanp.org
Cc: Mikayla Miller; Kelly Zimmerman
Subject: RE: Home Health Program – Authorizing Authority and Emergency Provisions LAC 50:XIII.Chapter 1 Proposed Rule

Mr. Harrington,

On behalf of the Louisiana Department of Health and our Medicaid Executive Director, Tara LeBlanc, I'm writing to confirm receipt of your comments on the proposed rule to amend LAC 50:XIII. Chapter 1 in the Medical Assistance Program. We truly appreciate your support of Louisiana's Medicaid Program and the contributions of all of the nurse practitioners who help the Department to meet its mission to protect and promote health and to ensure access to medical, preventive and rehabilitative services for all citizens of the State of Louisiana.

We are pleased to implement Act 181 of the 2021 Regular session that will allow additional practitioners to order home health services, which will improve access to home health services. Implementation includes amending the Louisiana Administrative Code, updating provider manuals, and ensuring Louisiana's six managed care organizations have implemented the changes. While the Department is not able to amend rules outside of Title 50, will work with any entities who wish to amend their rules under Title 48, to ensure alignment across regulations.

If you would like to discuss anything further or would like additional information, please don't hesitate to reach out.

Best,

Brandon Bueche

Section Chief

Program Operations and Compliance

Brandon.Bueche@la.gov | (225) 384-0460



From: Frank Harrington <fharrington@aanp.org>
Sent: Sunday, April 2, 2023 7:26 AM
To: Mikayla Miller <Mikayla.Miller@la.gov>; Kelly Zimmerman <Kelly.Zimmerman@la.gov>
Cc: Adam Horgan <ahorgan@aanp.org>
Subject: Home Health Program – Authorizing Authority and Emergency Provisions LAC 50:XIII.Chapter 1 Proposed Rule

EXTERNAL EMAIL: Please do not click on links or attachments unless you know the content is safe.

Good Morning,

On behalf of the American Association of Nurse Practitioners, please find the attached comments in regard to the proposed rule to authorize NPs and other clinicians to order home health services. We appreciate your consideration of these comments and actions taken by the Louisiana Department of Health to increase access to home health services. Please let us know if there is any additional information that we can provide that would be helpful.

Have a wonderful weekend,

Frank

Franklin Harrington
Director of Reimbursement and Regulatory Affairs
American Association of Nurse Practitioners
1400 Crystal Drive, Suite 540
Arlington, VA 22202
Phone: (571) 777-8454
fharrington@aanp.org

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State of Louisiana
Louisiana Department of Health
Office of the Secretary

April 10, 2023

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
The Honorable Mack "Bodi" White, Chairman Senate Finance Committee
The Honorable Jerome Zeringue, Chairman House Appropriations Committee

From: Stephen R. Russo
Secretary

Re: Second Report to LAC 50:III.10705 – Medicaid Eligibility – Resource Disregards

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Medicaid Eligibility – Resource Disregards, LAC 50:III.10705.

A Notice of Intent on the proposed amendments was published in the February 20, 2022 issue of the *Louisiana Register* (LR 49:375). 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2022, Notice of Intent when it is published as a final rule in the May 20, 2023, issue of the *Louisiana Register*.

Please contact Christopher Chase, Christopher.Chase@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Charlene Julien, Medicaid Deputy Director, LDH
Rhett Decoteau, Medicaid Section Chief, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

Section 1902(r)(2) of the Social Security Act (SSA) grants states the authority to adopt resource disregards for the purposes of determining eligibility in the Medical Assistance Program (Medicaid). The Department of Health, Bureau of Health Services Financing determined that it was necessary to disregard unspent funds received as a class member pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson, No. 820-839 from resources when determining Medicaid eligibility. Under the authority granted by section 1902(r)(2) of the SSA, the department promulgated an Emergency Rule which amended the provisions governing financial eligibility in the Medical Assistance Program in order to disregard unspent funds received by settlement class members in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson, No. 820-839 from resources (*Louisiana Register*, Volume 49, Number 1). This proposed Rule is being promulgated to continue the provisions of the January 1, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part III. Eligibility

Subpart 5. Financial Eligibility

Chapter 107. Resources

§10705. Resource Disregards

A. - D. ...

E. Disregard from resources unspent funds received as a class member pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson. No. 820-839.

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 and the Office of Aging and Adult Services, LR 35:1899 (September 2009), amended LR 36:2867 (December 2010), LR 41:949 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 45:1772 (December 2019), LR 46:1393 (October 2020), 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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by allowing Medicaid beneficiaries to retain unspent funds received pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al* and maintain Medicaid benefits.

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 a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by allowing Medicaid beneficiaries to retain unspent funds

NOTICE OF INTENT

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

Medicaid Eligibility
Resource Disregards
(LAC 50:III.10705)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:III.10705 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.

received pursuant to a class settlement in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al* and maintain Medicaid benefits.

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 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 April 3, 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 March 13, 2023. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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. 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: Medicaid Eligibility Resource Disregards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no impact to the state to implement this rule since the members of the settlement class are currently receiving Medicaid services; however, in the absence of the rule, those individuals could be determined to be ineligible which would

result in a savings. It is anticipated that \$540 (\$270 SGF and \$270 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)

There is no impact to implement this rule since the members of the settlement class are currently receiving Medicaid services; however, in the absence of the rule, these individuals could be determined to be ineligible which would decrease revenue collections. It is anticipated that \$270 will be collected in FY 22-23 for the federal expense for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the January 1, 2023 Emergency Rule, which amended the provisions governing financial eligibility in the Medical Assistance Program in order to disregard unspent funds received by settlement class members in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.*, 24th Judicial District Court, Parish of Jefferson, No. 820-839 from resources. Implementation of this proposed rule will allow these Medicaid beneficiaries to continue receiving services since the unspent funds received as a class settlement member in the case of *Nancy Anderson, et al. v. Bob Dean Jr., et al.* will not be counted when their eligibility is determined.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#069

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

April 10, 2023

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
The Honorable Mack "Bodi" White, Chairman Senate Finance Committee
The Honorable Jerome Zeringue, Chairman House Appropriations Committee

From: Stephen R. Russo
Secretary

Re: Second Report to LAC 50:XXVII.Chapter 5 – Medical Transportation Program –
Non-Emergency Medical Transportation – American Rescue Plan Act

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Medical Transportation Program – Non-Emergency Medical Transportation – American Rescue Plan Act, LAC 50:XXVII.Chapter 5.

A Notice of Intent on the proposed amendments was published in the February 20, 2022 issue of the *Louisiana Register* (LR 49:376). 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2022, Notice of Intent when it is published as a final rule in the May 20, 2023, issue of the *Louisiana Register*.

Please contact Veronica Gonzalez, Veronica.Gonzalez@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Kolynda Parker, Medicaid Deputy Director, LDH
Brandon Bueche, Medicaid Program Manager, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

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

**Medical Transportation Program
Non-Emergency Medical Transportation
American Rescue Plan Act
(LAC 50:XXVII.Chapter 5)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.Chapter 5 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) approved the use of funds provided under the American Rescue Plan Act of 2021 (ARPA) for bonus payments to providers of non-emergency medical transportation (NEMT) services. The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of ARPA bonus payment funds to eligible NEMT providers (*Louisiana Register*, Volume 49, Number

2). This proposed Rule is being promulgated to continue the provisions of the January 20, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation

Subchapter A. General Provisions

§505. Requirements for Coverage

A. Payment shall only be authorized for the least costly means of transportation available. The least costly means of transportation shall be determined by the department or its designee and considered the beneficiary's choice of transportation, the level of service required to safely transport the beneficiary (e.g., ambulatory, wheelchair, transfer), and the following hierarchy:

1. - 3. ...

4. for-profit providers enrolled in the Medicaid Program.

B. - D. ...

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, Bureau of Health Services Financing, LR 47:1639 (November 2021), amended LR 49:

Subchapter C. Provider Responsibilities

§517. Provider Enrollment

A. - C. ...

D. All NEMT providers must agree to cover the entire parish or parishes for which he or she provides non-emergency medical transportation services.

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, Bureau of Health Services Financing, LR 47:1639 (November 2021), amended LR 49:

Subchapter E. Non-Emergency Medical Transportation American Rescue Plan Act

§531. Non-Emergency Medical Transportation Bonus Payments

A. General Provisions

1. Non-emergency medical transportation (NEMT) providers that are fully credentialed in the Medicaid Program may be eligible to receive a bonus payment under the Department of Health's (LDH) American Rescue Plan Act (ARPA) NEMT Program until the program's federal funds are exhausted or through the conclusion of the program in March 2024.

2. Fully credentialed NEMT providers who meet all eligibility requirements are entitled to a monthly disbursement of \$500 per vehicle, for up to three vehicles per month, totaling a maximum payment of \$1,500 per month per transportation provider. LDH will determine eligibility for monthly payments based on the NEMT provider's ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program and the LDH ARPA NEMT Program.

3. A NEMT provider is a provider of NEMT services and for the purpose of this bonus payment, includes non-profit and for-profit providers.

4. LDH will administer all payments for the LDH ARPA NEMT Program.

5. In order to receive payments under the LDH ARPA NEMT Program, the NEMT provider shall do the following:

a. accede to all provisions of the LDH ARPA NEMT Program and execute a contractual agreement with LDH, solely for the distribution of ARPA funds;

b. create an account with LAGov to ensure eligibility of payment.

c. maintain ongoing compliance for all provider, driver, and vehicle requirements set forth by the Medicaid Program;

d. submit reporting and credentialing documentation for all drivers and vehicles within their individual company used for NEMT services on a monthly basis. Failure to meet program time requirements shall result in loss of the monthly bonus payment; and

e. submit a monthly attestation to certify the accuracy of the submitted supporting and credentialing documentation.

6. NEMT services are ineligible and shall not be submitted as a completed service if the status of the NEMT service rendered results in one of the following:

a. the provider is a no-show;

b. no NEMT vehicle is available;

c. no NEMT driver is available; or

d. the NEMT provider is late which causes the beneficiary to miss his or her scheduled Medicaid covered service

B. Payments

1. Transportation providers that meet the requirements for both the LDH ARPA NEMT Program and Medicaid Program will receive a single lump sum payment of \$500 per vehicle, for a maximum of three vehicles, totaling a maximum payment of \$1,500 per month. Transportation providers must meet all requirements on a monthly basis for payment eligibility.

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, Bureau of Health Services Financing, 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 or 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 a positive impact on small businesses as it increases reimbursement.

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, but may reduce the total direct and indirect cost to the provider to provide the same level of service, and may enhance the provider's ability to provide the same level of service as described in HCR 170 since this proposed Rule increases payments to providers for the services they already render.

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 April 3, 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 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 March 13, 2023. If the criteria set forth in R.S. R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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. 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: Medical Transportation Program Non-Emergency Medical Transportation American Rescue Plan Act

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in increased state costs of approximately \$1,800,432 for FY 22-23 and \$1,350,000 for FY 23-24. It is anticipated that \$864 (\$432 SGF and \$432 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)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,800,432 for FY 22-23 and \$1,350,000 for FY 23-24. It is anticipated that \$432 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 OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the January 20, 2023 Emergency Rule, which adopted provisions in the Medical Transportation Program in order to establish guidelines for the administration and distribution of funds provided under the American Rescue Plan Act of 2021 (ARPA) as bonus payments to eligible providers of non-emergency medical transportation (NEMT) services. These increased payments will ensure that eligible NEMT providers continue rendering services to Medicaid beneficiaries. Implementation of this proposed rule is anticipated to increase expenditures for NEMT services by approximately \$3,600,000 for FY 22-23 and \$2,700,000 for FY 23-24.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#068

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

April 10, 2023

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: Stephen R. Russo
Secretary

Re: Second Report to LAC 50:XV.12901 and 12903 – Personal Care Services – Long Term Care

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Personal Care Services – Long Term Care, LAC 50:XV.12901 and 12903.

A Notice of Intent on the proposed amendments was published in the February 20, 2022 issue of the *Louisiana Register* (LR 49:378). 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. 49:966B-C was submitted.

Unless otherwise directed, the Department anticipates adopting the February 20, 2022, Notice of Intent when it is published as a final rule in the May 20, 2023, issue of the *Louisiana Register*.

Please contact Layne Janet, Layne.Janet@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Melinda Richard, OAAS Assistant Secretary, LDH
Kirsten Clebert, OAAS Policy Division Director, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

**Personal Care Services
Long Term Care
(LAC 50:XV.12901 and 12903)**

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XV.12901 and 12903 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 and the Office of Aging and Adult Services propose to amend the provisions governing long term-personal care services (LT-PCS) in order to update and remove obsolete terminology to reflect the current assessment tool used to determine LT-PCS eligibility, and to ensure that consistent language is used throughout the administrative Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. The purpose of long term-personal care services (LT-PCS) is to assist individuals with functional impairments with their daily living activities. LT-PCS must be provided in

accordance with an approved service plan and supporting documentation. In addition, LT-PCS must be coordinated with the other Medicaid and non-Medicaid services being provided to the participant and will be considered in conjunction with those other services.

B. Each individual requesting or receiving long term-personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the level of care eligibility tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/participant shall be assessed using a uniform interRAI home care assessment tool or a subsequent assessment tool designated by OAAS. The assessment is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying an individual's need for support in performance of activities of daily living (ADLs). The assessment generates a score which measures the individual's degree of self-performance of the following activities of daily living:

1. bed mobility;
2. toilet transfer;
3. toilet use; and
4. eating.

D. Based on the individual's ADL Index score, they are assigned and are eligible for a set allocation of weekly service hours associated with that score.

1. If the individual is allocated less than 32 hours per week and believes that they are entitled to more hours, the individual or their responsible representative may request a fair hearing to appeal the decision.

2. The individual may qualify for more hours if it can be demonstrated that:

- a. one or more answers to the questions involving the ADLs used in the ADL Index score are incorrect as recorded on the assessment; or
- b. they need additional hours to avoid entering into a nursing facility.

E. Requests for LT-PCS shall be accepted from the following individuals:

1. a Medicaid participant who wants to receive LT-PCS;
2. an individual who is legally responsible for a participant who may be in need of LT-PCS; or
3. a responsible representative designated by the participant to act on his/her behalf in requesting LT-PCS.

F. Each individual who requests LT-PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the individual to act on his/her behalf in the process of accessing and/or maintaining LT-PCS.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the participant's business without his/her involvement.

b. The written designation is valid until revoked by the participant. To revoke the written designation, the

revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist or represent, as needed, the participant in the assessment, care plan development and service delivery processes; and

b. to aid the participant in obtaining all necessary documentation for these processes.

3. No individual may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based services. This includes but is not limited to:

- a. ...
- b. long term-personal care services;
- c. - d. ...

G. The Department of Health may remove an LT-PCS provider from the LT-PCS provider freedom of choice list and offer freedom of choice to LT-PCS participants when:

1. one or more of the following departmental proceedings are pending against an LT-PCS participant's service provider:

1.a. - 3....

H. The department may offer participants the freedom to choose another provider if/when the owner(s), operator(s), or member(s) of the governing body of the provider agency is/are under investigation related to:

1. - 8. ...

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 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 39:2506 (September 2013), LR 41:540 (March 2015), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1980 (October 2017), LR 49:

§12903. Covered Services

A. *LT-PCS* are defined as those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by themselves.

1. ADLs are those personal, functional activities required by the participant. ADLs include tasks such as:

- a. eating;
- b. bathing;
- c. dressing;
- d. grooming/personal hygiene;
- e. transferring;
- f. ambulation;
- g. toileting; and
- h. bed mobility.

2. IADLs are those activities that are considered essential but may not require performance on a daily basis. IADLs include tasks such as:

- a. light housekeeping;
- b. food preparation and storage;
- c. shopping;
- d. laundry;
- e. assistance with scheduling medical appointments when necessary;
- f. accompanying to medical appointments when necessary;
- g. assistance with accessing transportation;
- h. medication reminders; and
- i. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

3. Emergency and non-emergency medical transportation is a covered Medicaid service and is available to all participants. Non-medical transportation is not a required component of LT-PCS. However, providers may choose to furnish transportation for participants during the course of providing LT-PCS. If transportation is furnished, the provider agency must accept any liability for their employee transporting a participant. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

4. Constant or intermittent supervision and/or sitter services are not a component of LT-PCS.

5. For participants receiving LT-PCS with the Adult Day Health Care (ADHC) Waiver, LT-PCS may be provided by one worker for up to three LT-PCS participants who live together, and who have a common direct service provider.

A.6. - E. 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 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2507 (September 2013), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 42:1931 (November 2016), LR 47:593 (May 2021), 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. 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 April 3, 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 March 13, 2023. If criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on March 30, 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 March 13, 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. 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: Personal Care Services Long Term Care

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 22-23. It is anticipated that

\$1,188 (\$594 SGF and \$594 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)

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 22-23. It is anticipated that \$594 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 OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule amends the provisions governing long term-personal care services (LT-PCS) in order to update and remove obsolete terminology to reflect the current assessment tool used to determine LT-PCS eligibility, and to ensure that consistent language is used throughout the administrative rule. It is anticipated that implementation of this proposed rule will not result in costs to LT-PCS providers in FY 22-23, FY 23-24, and FY 24-25, but will be beneficial by ensuring that the current LT-PCS provisions are accurately reflected in the Louisiana Administrative Code.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2302#070

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office