

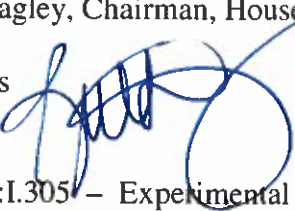


State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 10, 2022

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 LAC 50:I.305 – Experimental Procedures – Routine Care for Beneficiaries in Clinical Trials

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Experimental Procedures – Routine Care for Beneficiaries in Clinical Trials, LAC 50:I.305.

A Notice of Intent on the proposed amendments was published in the June 20, 2022 issue of the *Louisiana Register* (LR 48:1598). 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 June 20, 2022, Notice of Intent when it is published as a final rule in the September 20, 2022, issue of the *Louisiana Register*.

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

Cc: Tara LeBlanc, LDH Medicaid Director
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

Experimental Procedures
Routine Care for Beneficiaries in Clinical Trials
(LAC 50:I.305)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.305 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 experimental procedures in order to align the provisions governing routine care for beneficiaries in clinical trials with federal requirements specified in the American Rescue Plan Act.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 1. General Provisions
Chapter 3. Experimental Procedures

§305. Routine Care for Beneficiaries in Clinical Trials

A. The Medicaid program shall cover routine patient costs for items and services furnished in connection with participation in a qualifying clinical trial in accordance with section 1905(gg) of the Social Security Act.

B. - C. 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 46:796 (June 2020), amended LR 48:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

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 July 11, 2022. 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 July 28, 2022 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 July 11, 2022. 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: Experimental Procedures
Routine Care for Beneficiaries in Clinical Trials**

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 21-22. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 21-22 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 21-22. It is anticipated that \$216 will be collected in FY 21-22 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 experimental procedures in order to align the provisions governing routine care for beneficiaries in clinical trials with federal requirements specified in the American Rescue Plan Act. The proposed rule does not change existing policy, but it ensures that the terminology and specifications in the Louisiana Administrative Code are in alignment with requirements of the Social Security Act. It is anticipated that implementation of this proposed rule will not result in costs to providers in FY 21-22, FY 22-23, and FY 23-24 but will be beneficial by ensuring that the language in the administrative rule aligns with federal law.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2206#052

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

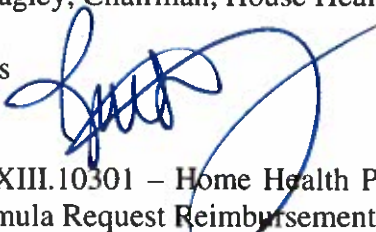


State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 10, 2022

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 LAC 50:XIII.10301 – Home Health Program – Durable Medical Equipment – Enteral Formula Request Reimbursement

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 – Durable Medical Equipment – Enteral Formula Request Reimbursement, LAC 50:XIII.10301.

A Notice of Intent on the proposed amendments was published in the June 20, 2022 issue of the *Louisiana Register* (LR 48:1599). 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 June 20, 2022, Notice of Intent when it is published as a final rule in the September 20, 2022, issue of the *Louisiana Register*.

Please contact Irma Gauthier at Irma.Gauthier2@la.gov and Amanda Dumas, MD, at Amanda.Dumas@la.gov, if you have any questions or require additional information about this matter.

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

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIII. Home Health Program
Subpart 3. Medical Equipment, Supplies and Appliances
Chapter 103. Reimbursement Methodology
§10301. General Provisions

A. - F. ...

G. Effective for dates of service on or after October 1, 2022, fees for enteral formulas will be set at 90 percent of 2021 Rural Medicare fees. For enteral formulas without a corresponding Medicare fee, the Medicaid fees will be set at the lowest fee at which the item has been determined to be widely available based on a review of similar formulas, usual and customary fees charged in the community, and other Medicaid states.

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 35:1894 (September 2009), amended LR 36:1247 (June 2010), LR 36:2041 (September 2010), LR 39:1050 (April 2013), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

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 as it will allow recipients access to a wider selection of enteral formulas.

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 as it will allow recipients access to a wider selection of enteral formulas.

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 be beneficial to small businesses as it simplifies the prior authorization process for durable medical equipment providers and increases access to a wider selection of enteral formulas for their patients.

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

NOTICE OF INTENT

Department of Health
Bureau of Health Services Financing

Home Health Program—Durable Medical Equipment
Enteral Formula Reimbursement
(LAC 50:XIII.10301)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.10301 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 reimbursement for durable medical equipment in the Home Health Program in order to revise the methodology used to set the rates for enteral formulas and allow reimbursement under the standard procedure codes on the Louisiana Medicaid fee schedule.

ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

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 July 11, 2022. 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 July 28, 2022 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 July 11, 2022. 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—Durable Medical Equipment—Enteral Formula Reimbursement

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

It is anticipated that implementation of this proposed rule will have an indeterminable fiscal impact to the state for FY 21-22, FY 22-23 and FY 23-24, since enteral products will now be grouped and reimbursed under categories. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 21-22 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 an indeterminable impact on revenue collections for FY 21-22, FY 22-23 and FY 23-24. It is anticipated that \$270 will be collected in FY 21-22 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)

The proposed rule amends the provisions governing reimbursement for durable medical equipment in the Home Health Program in order to revise the methodology used to set the rates for Enteral Formulas and allow reimbursement for these products under the standard procedure codes on the

Louisiana Medicaid fee schedule. The proposed rule will allow reimbursement for these products under specific categories on the fee schedule and align Louisiana Medicaid's reimbursement with other states and Medicare. Implementation of this proposed rule will allow beneficiaries greater access to a wider selection of these products to meet their medical needs. Providers will also benefit since it streamlines the prior authorization process and increases access to products for their patients. It is anticipated that implementation of this proposed rule will result in an indeterminable net impact on expenditures in the Medicaid program for FY 21-22, FY 22-23, and FY 23-24, since individual products will be grouped and paid under categories.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2206#053

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 10, 2022

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

A handwritten signature in blue ink, appearing to read "Courtney N. Phillips", written over the "From:" field.

Re: Second Report LAC 50:XIII.104 – Home Health Program – 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 – Emergency Provisions, LAC 50:XIII.104.

A Notice of Intent on the proposed amendments was published in the June 20, 2022 issue of the *Louisiana Register* (LR 48:1600). 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 June 20, 2022, Notice of Intent when it is published as a final rule in the September 20, 2022, issue of the *Louisiana Register*.

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

Cc: Tara LeBlanc, LDH Medicaid Director
Kolynda Parker, Medicaid Deputy 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**

**Home Health Program—Emergency Provisions
(LAC 50:XIII.104)**

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:XIII.104 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 adopt provisions in the Home Health Program in order to temporarily allow non-physician practitioners to order and review home health services in the event of a federal or state declared emergency or disaster.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 1. General Provisions

§104. Emergency Provisions

A. In the event that the federal or state government declares an emergency or disaster, the Medicaid Program may temporarily allow non-physician practitioners (advanced practice registered nurses and physician assistants) to order and review home health services, including the completion of associated documentation, if such action is deemed necessary to insure sufficient services are available to meet beneficiaries' needs.

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:

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, as it will ensure continuity of care during a declared disaster or emergency.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

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 July 11, 2022. 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 July 28, 2022 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 July 11, 2022. 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 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 21-22. It is anticipated that \$432 (\$216 SFG and \$216 FED) will be expended in FY 21-22 for the state's administrative expenses for promulgation of this proposed 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 not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$216 will be collected in FY 21-22 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 adopts provisions in the Home Health Program in order to temporarily allow non-physician practitioners to order and review home health services in the event of a federal or state declared disaster or emergency. Beneficiaries and providers will benefit from implementation of this proposed rule as it ensures continuity of care and timely access to services by allowing other medical professionals to order and review home health orders in the event of a shortfall in physician availability during a declared disaster or emergency. It is anticipated that implementation of this proposed rule will not result in costs to home health providers in FY 21-22, FY 22-23, and FY 23-24.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2206#054

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

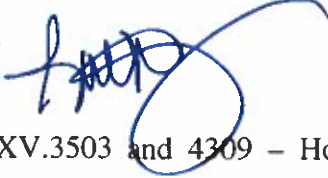


State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 10, 2022

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 LAC 50:XV.3503 and 4309 – Hospice Services – Emergency Services and Inpatient Care

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Hospice Services – Emergency Services and Inpatient Care, LAC 50:XV.3503 and 4309.

A Notice of Intent on the proposed amendments was published in the June 20, 2022 issue of the *Louisiana Register* (LR 48:1601). 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 June 20, 2022, Notice of Intent when it is published as a final rule in the September 20, 2022, issue of the *Louisiana Register*.

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

Cc: Tara LeBlanc, LDH Medicaid Director
Kolynda Parker, Medicaid Deputy 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**

Hospice Services
Emergency Services and Inpatient Care
(LAC 50:XV.3503 and 4309)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.3503 and §4309 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 hospice services in order to:

1. temporarily waive the provision requiring daily visits by the hospice provider to all clients under the age of

21 and allow telemedicine visits as an alternative in the event of a federal or state declared emergency or disaster; and

2. clarify that the five-day limit for inpatient care is applied to respite care only.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 3. Hospice

Chapter 35. Recipient Eligibility

§3503. Waiver of Payment for Other Services

A. - E. ...

F. In the event that the federal or state government declares an emergency or disaster, the Medicaid Program may temporarily waive the provision requiring daily visits by the hospice provider to all clients under the age of 21 to facilitate continued care while maintaining the safety of staff and beneficiaries. Visits will still be completed based on clinical need of the beneficiary, family, and availability of staff, as requested by the family. The use of telemedicine visits as an alternative is allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:129 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 46:1563 (November 2020), LR 48:

§4309. Limitation on Payments for Inpatient Care

A. ...

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient respite care days for any one hospice beneficiary may not exceed five days per occurrence.

2. - 2.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:132 (January 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 48:

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, as it will ensure continuity of care during a federal or state declared emergency or disaster and remove unintended barriers to receiving palliative care timely.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or

family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

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 July 11, 2022. 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 July 28, 2022 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 July 11, 2022. 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: Hospice Services Emergency Services and Inpatient 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 21-22. It is anticipated that \$648 (\$324 SFG and \$324 FED) will be expended in FY 21-22

for the state's administrative expenses for promulgation of this proposed 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 not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$324 will be collected in FY 21-22 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 hospice services in order to: 1) temporarily waive the provision requiring daily visits by the hospice provider to all clients under the age of 21 and allow telemedicine visits as an alternative in the event of a federal or state declared emergency or disaster; and 2) clarify that the five-day limit for inpatient care is applied to respite care only. Implementation of this proposed rule will benefit hospice beneficiaries by ensuring continuity of care during federal or state declared emergencies or disasters and removing unintended barriers to receiving palliative care timely. It is anticipated that implementation of this proposed rule will not result in costs to hospice providers in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by adding flexibility to waive the daily visit requirement and/or allow telemedicine during declared emergencies or disasters.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2206#055

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office




State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 10, 2022

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 LAC 50:VII.32915 – Intermediate Care Facilities for Persons with Intellectual Disabilities – Complex Care Reimbursements

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Proposed Intermediate Care Facilities for Persons with Intellectual Disabilities – Complex Care Reimbursements, LAC 50:VII.32915.

A Notice of Intent on the proposed amendments was published in the June 20, 2022 issue of the *Louisiana Register* (LR 48:1603). 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 June 20, 2022, Notice of Intent when it is published as a final rule in the September 20, 2022, issue of the *Louisiana Register*.

Please contact Enrika LaCour at Enrika.laCour@la.gov and Lindsey Nizzo, at Lindsey.Nuzzo@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, LDH Medicaid Director
Tizi Robinson, Medicaid Program Manager, LDH
Andrew Perilloux, 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

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for Persons with
Intellectual Disabilities
Chapter 329. Reimbursement Methodology
Subchapter A. Non-State Facilities
§32915. Complex Care Reimbursements

A. Private (non-state) intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) may receive an add-on payment to the per diem rate for providing complex care to Medicaid beneficiaries, when medically necessary. The add-on payment shall be a flat fee daily amount and consists of payment for one of the following components alone or in combination:

1. direct service worker add-on;
2. skilled nursing add-on; and
3. equipment add-on;
4. - 7. Repealed.

B. To qualify, beneficiaries must meet medical necessity criteria established by the Medicaid Program. Supporting medical documentation must also be submitted as specified by the Medicaid Program. The duration of approval of the add-on payment(s) is at the sole discretion of the Medicaid Program and shall not exceed 1 year.

C. Medical necessity of the add-on payment(s) shall be reviewed and re-determined by the Medicaid Program no less than annually from the date of initial approval of each add-on payment. This review shall be performed in the same manner and using the same medical necessity criteria as the initial review.

D. Each add-on payment requires documentation that the enhanced supports are already being provided to the beneficiary, as specified by the Medicaid program.

1. - 2.a.iii. Repealed.

E. One of the following admission requirements must be met in order to qualify for the add-on payment:

1. the beneficiary has been admitted to the facility for more than 30 days with supporting documentation of medical necessity; or
2. the beneficiary is transitioning from another similar agency with supporting documentation of medical necessity.
3. Repealed.

F. The Medicaid Program shall require compliance with all applicable laws, rules, and regulations as a condition of an ICF/IID's qualification for any complex care add-on payment(s) and may evaluate such compliance in its initial annual qualifying reviews.

1. - 2. Repealed.

G. The following additional requirements apply:

1. Beneficiaries receiving enhanced rates must be included in annual surveys to ensure continuation of supports and review of individual outcomes.

2. Fiscal analysis and reporting is required annually.

H. - 1.3.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, Bureau of Health Services Financing, LR 42:276 (February 2016), amended by the Department of Health.

NOTICE OF INTENT
Department of Health
Bureau of Health Services Financing

Intermediate Care Facilities for
Persons with Intellectual Disabilities
Complex Care Reimbursements
(LAC 50:VII.32915)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32915 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 reimbursement to private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to revise and streamline the process by which ICFs/IID can request add-on rates for medically qualified beneficiaries receiving above routine care and whose staffing levels exceed the required minimum.

Bureau of Health Services Financing, LR 44:1447 (August 2018). LR 45:273 (February 2019). LR 48:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Analysis

In compliance with the Small Business Protection Act, the economic impact of this proposed Rule on small businesses has been considered. It is anticipated that this proposed Rule will have no impact on small businesses.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on August 1, 2022.

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 July 11, 2022. 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 July 28, 2022 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 July 11, 2022. 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: Intermediate Care Facilities for Persons with Intellectual Disabilities—Complex Care Reimbursements

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 21-22. It is anticipated that \$648 (\$324 SFG and \$324 FED) will be expended in FY 21-22 for the state's administrative expenses for promulgation of this proposed 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 not affect federal revenue collections other than the federal share of the promulgation costs for FY 21-22. It is anticipated that \$324 will be collected in FY 21-22 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 reimbursement to private non-state intermediate care facilities for persons with intellectual disabilities (ICFs/IID) in order to revise and streamline the process by which ICFs/IID can request add-on rates for medically qualified beneficiaries receiving above routine care and whose staffing levels exceed the required minimum. Implementation of this proposed rule will benefit qualified ICF/IID residents by ensuring improved quality of care for medically fragile beneficiaries. It is anticipated that implementation of this proposed rule will not result in costs to ICFs/IID in FY 21-22, FY 22-23, and FY 23-24, but will be beneficial by ensuring a shorter turnaround time and easier access to add-on rates for medically complex beneficiaries.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule has no known effect on competition and employment.

Patrick Gillies
Medicaid Executive Director
2206#053

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office