



State of Louisiana

Louisiana Department of Health
Office of the Secretary

August 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, JD
Secretary

Re: Second Report to LAC 48:I.4001 – Healthcare Service Provider Fees – Emergency Ground Ambulance Service Providers

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Healthcare Service Provider Fees – Emergency Ground Ambulance Service Providers, LAC 48:I.4001.

A Notice of Intent on the proposed amendments was published in the June 20, 2023 issue of the *Louisiana Register* (LR 49:1159). 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 June 20, 2023, Notice of Intent when it is published as a final rule in the September 20, 2023, issue of the *Louisiana Register*.

Please contact Tizi Robinson, Tizi.Robinson@la.gov, and Erin Lee, Erin.Lee@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Rachel Newman, 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

CMS requirements (*Louisiana Register*, Volume 49, Number 5). This proposed rule is being promulgated to continue the provisions of the July 1, 2023 Emergency Rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 40. Provider Fees

§4001. Specific Fees

A. Definitions

Emergency Ground Ambulance Service Provider—a non-public, non-federal provider of emergency ground ambulance services.

* * *

B. - D. ...

E. Emergency Ground Ambulance Services. A fee shall be imposed on emergency ground ambulance services in accordance with R.S. 46:2626.

1. The assessment shall be a percentage fee, determined at the discretion of the secretary with the express and written mutual agreement of the emergency ground ambulance service providers subject to the assessment and which make up a minimum of 65 percent of all emergency ground ambulance services in the state of Louisiana.

a. the maximum fee allowable in any year shall not exceed the percentage of net patient service revenues permitted by federal regulation pursuant to 42 CFR 433.68 as determined by the department, as reported by the provider and subject to audit for the previous fiscal year of the provider. The department will arrive at net patient services revenue by using net operating revenue as defined in R.S. 46:2626.

1.b. - 3.a. Repealed.

F. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with Chapter 45 of Title 46 as enacted in 1992, 46:2601-2605, redesignated as Chapter 47 of Title 46, containing R.S. 46:2621 to 46:2625 and P.L. 102-234, R.S. 36:254, and Article VII, Section 10.13 of the Constitution of Louisiana.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 19:347 (March 1993), amended LR 20:51 (January 1994), LR 26:1478 (July 2000), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:100 (January 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1887, 1888 (November 2016), LR 43:73 (January 2017), repromulgated LR 43:323 (February 2017), amended LR 44:1015 (June 2018), LR 44:1894 (October 2018), LR 45:1597 (November 2019), LR 49:263 (February 2023), 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.

NOTICE OF INTENT

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

**Healthcare Services Provider Fees
Emergency Ground Ambulance Service Providers
(LAC 48:I.4001)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 48:I.4001 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) requires that reimbursement for emergency ambulance services transition from the Full Medicaid Pricing program to an approved federal supplemental payment program by July 1, 2023. The Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees for emergency ground ambulance services in order to ensure that the language in the administrative Rule reflects current

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 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 July 31, 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 July 10, 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 July 27, 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 July 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Healthcare Services Provider Fees Emergency Ground Ambulance Service Providers

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 \$648 (\$324 SGF and \$324 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 implementation of this proposed rule will increase statutory dedicated revenue collections by approximately \$6,596,856 for FY 23-24 and \$6,596,856 for FY 24-25, and will reduce a like amount of intergovernmental transfer revenues in those fiscal years. In addition, it is anticipated that federal revenue collections will increase by approximately \$324 for FY 22-23 and \$0 for FY 23-24 and FY 24-25. It is anticipated that \$324 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the July 1, 2023 Emergency Rule, which amended the provisions governing provider fees for emergency ground ambulance services in order to ensure that the administrative rule reflects the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services requirement that reimbursement for these services transition from the Full Medicaid Pricing program to an approved federal supplemental payment program. This proposed rule also revises the language in the Louisiana Administrative Code to be more generic so that an amendment is not required each year to match legislation. It is anticipated that implementation of this proposed rule will result in an increase in statutory dedicated revenue collections of approximately \$6,596,856 for FY 23-24 and \$6,596,856 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2306#039

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana

Louisiana Department of Health
Office of the Secretary

August 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, JD
Secretary

Re: Second Report to LAC 50:XXI.Chapter 11 – Home and Community-Based Services
Waivers – Fiscal Employer Agent Standards for Participation

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Home and Community-Based Services Waivers – Fiscal Employer Agent Standards for Participation, LAC 50:XXI.Chapter 11.

A Notice of Intent on the proposed amendments was published in the June 20, 2023 issue of the *Louisiana Register* (LR 49:1160). 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 June 20, 2023, Notice of Intent when it is published as a final rule in the September 20, 2023, issue of the *Louisiana Register*.

Please contact Nedria Wesley, Nedria.Wesley@la.gov, and Mary Norris, Mary.Norris@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Brian Bennett, 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
and
Office of Aging and Adult Services
and
Office for Citizens with Developmental Disabilities**

**Home and Community-Based Services Waivers
Fiscal Employer Agent Standards for Participation
(LAC 50:XXI.Chapter 11)**

The Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities propose to adopt LAC 50:XXI.Chapter 11 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 currently provides financial management services (FMS) for self-directed home and community-based waiver services administered by the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities through an

administrative contract with a fiscal employer agent. The department has determined that eliminating the administrative contract and establishing FMS as a waiver service in order to allow fiscal employer agents to enroll in Medicaid will ensure greater stability among providers that support the self-direction program.

The Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities propose to adopt provisions establishing the standards for participation for fiscal employer agents in home and community-based services waiver programs.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 1. General Provisions

Chapter 11. Fiscal Employer Agent Standards for Participation in Home and Community-Based Services Waiver Programs

Subchapter A. General Provisions

§1101. Introduction

A. The Department of Health (LDH) establishes these minimum standards for participation as a fiscal employer agent (F/EA). These standards provide the core requirements for financial management services provided under home and community-based services waiver programs administered by the Office of Aging and Adult Services (OAAS), the Office for Citizens with Developmental Disabilities (OCDD), and the Bureau of Health Services Financing (BHSF).

B. LDH is responsible for setting the standards for F/EAs, monitoring the provisions of this Rule, and applying administrative sanctions for failures to meet the minimum standards for participation in serving employers/participants of the OAAS and OCDD-administered waiver programs.

C. The F/EA provides financial management services for participants who are eligible for self-directed waiver services. Under this service model, the F/EA assists individuals with management of fiscal employment and/or budget responsibilities and will provide the employer/participant with current utilization information to ensure self-directed services are not exceeded beyond the prior authorization cap; processes employer-related payroll and necessary taxes on behalf of self-direction participants. The F/EA also verifies qualifications (e.g., background checks, exclusion checks, etc.) for employees hired by the employers.

D. Medicaid-enrolled F/EAs providing financial management services at the time of OCDD and OAAS-administered waiver programs shall be required to meet the requirements of this Chapter.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1103. Certification Requirements

A. All F/EAs that provide financial management services must be certified through completion of a readiness review by LDH. It shall be unlawful to operate as an F/EA without being certified by LDH.

B. In order to provide financial management services, the F/EA must:

1. be certified through completion of a readiness review and meet the standards for participation requirements as set forth in this Rule;

2. sign a performance agreement with LDH;

3. enroll as an F/EA with the Louisiana Medicaid program to provide services for OCDD and OAAS-administered home and community-based services; and

4. comply with all policies and procedures set forth by LDH.

AUTHORITY NOTE: Promulgated in accordance with R.S.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1105. Certification Issuance

A. A certification shall:

1. be issued only to the F/EA named in the certification application;

2. be valid only for the F/EA to which it is issued after all applicable requirements are met;

3. enable the F/EA to provide financial management services for OCDD and OAAS-administered home and community-based services waivers statewide;

4. be valid indefinitely, unless revoked, suspended, modified, or terminated; and

5. be issued by LDH.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1107. Certification Refusal or Revocation and Fair Hearing

A. A certification may be revoked or refused if applicable certification requirements, as determined by LDH, have not been met. Certification decisions are subject to appeal and fair hearing, in accordance with R.S. 46:107(A)(3).

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1109. Certification Review

A. Compliance with certification requirements is determined by LDH through its F/EA monitoring processes. Monitors must be given access to data upon request by LDH to ensure the F/EA continues to meet certification requirements.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

Subchapter B. Administration and Organization

§1115. Governing Body

A. The F/EA shall have an identifiable governing body with responsibility for and authority over its policies and activities.

B. The F/EA shall have documents identifying all members of the governing body, their addresses, their terms of membership, and officers of the governing body.

C. The governing body of the F/EA shall:

1. ensure continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;

2. ensure the F/EA is adequately funded and fiscally sound;

3. review and approve the F/EA's annual budget; and

4. designate a person to act as administrator and delegate sufficient authority to this person to manage the F/EA.

D. The F/EA shall maintain an administrative file that includes:

1. documents identifying the governing body;

2. a list of members and officers of the governing body, along with their addresses and terms of membership;

3. minutes of formal meetings and by-laws of the governing body, if applicable;

4. documentation of the F/EA's authority to operate under state law;

5. an organizational chart of the F/EA which clearly delineates the line of authority;

6. all leases, contracts and purchases-of-service agreements to which the F/EA is a party;

7. insurance policies;

8. annual budgets and, if performed, audit reports;

9. the F/EA's policies and procedures; and

10. documentation of any corrective action taken as a result of external or internal reviews.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1117. Business Location and Operations

A. The F/EA shall have a business location which shall not be in an occupied personal residence. The F/EA must maintain the following at the business location:

1. staff to perform administrative functions;

2. direct service worker/employee personnel records;

and

3. participant service records.

B. The F/EA shall have the following for the business location:

1. a published nationwide toll-free telephone number that is available during business hours and capable of receiving messages 24 hours a day, seven days a week, including holidays;

2. a published business telephone number answered by staff during business hours;

3. a business fax number that is operational 24 hours a day, seven days a week, including holidays;

4. internet access;

5. a designated e-mail mailbox to receive inquiries from Medicaid beneficiaries and LDH; and

6. business hours shall be at least 8 a.m. to 5 p.m. CT, Monday through Friday, excluding official state holidays.

C. Records and other confidential information shall be secure and protected from unauthorized access.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1119. Financial Management

A. The F/EA must establish a system of financial management and staffing to assure maintenance of complete and accurate accounts, books, and records in keeping with generally accepted accounting principles.

B. The F/EA must not permit public funds to be paid, or committed to be paid, to any person who is a member of the governing board or administrative personnel who may have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the F/EA.

1. The F/EA shall have a written disclosure of any financial transaction with the F/EA in which a member of the governing board, administrative personnel, or his/her immediate family is involved.

C. To ensure the F/EA's ability to pay direct service workers for waiver services delivered, the F/EA shall have and maintain documented evidence of an available line of credit of at least \$1,000,000 or a cash reserve sufficient to cover the cost of two payroll cycles.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1121. Policy and Procedures

A. The F/EA shall have written policies and procedures approved by the owner or governing body which must be implemented and followed that address at a minimum the following:

1. confidentiality and confidentiality agreements;

2. security of files;

3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation, and kickbacks;

4. personnel;

5. grievance procedures;

6. emergency preparedness;

7. procedures for reporting suspected abuse, neglect, exploitation, and extortion;

8. procedures for reporting suspected fraud;

9. documentation; and

10. enrollment/disenrollment procedures.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1123. Organizational Communication

A. The F/EA must establish procedures to assure adequate communication among staff to provide continuity of services to the participant and to facilitate feedback from staff, participants, families, and when appropriate, the community.

B. The F/EA must have brochures and make them available to LDH or its designee. The brochures must include the following information:

1. a toll-free number and email address to direct customer service questions or to receive assistance;
2. information on how to make a complaint if they are dissatisfied with F/EA services; and
3. a description of the F/EA, services provided, current mailing and physical addresses, website information, and the F/EA's toll-free number.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49.

Subchapter C. Provider Responsibilities

§1129. General Provisions

A. Any entity wishing to provide F/EA services shall meet all of the standards for participation contained in this Rule, unless otherwise specifically noted within these provisions.

B. The F/EA shall also abide by and adhere to any federal and state law, Rule, policy, procedure, performance agreement, or other state or federal requirements pertaining to the provision of F/EA services.

C. Failure to comply with the requirements of these standards for participation may result in the following actions including, but not limited to:

1. recoupment of funds;
2. sanctions for violations/non-performance as outlined in the performance agreement;
3. citation of deficient practice and plan of correction submission;
4. removal from the F/EA freedom of choice list; or
5. decertification as an F/EA and termination of the F/EA's Medicaid provider enrollment.

D. The F/EA shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to LDH.

E. The F/EA shall, upon request by LDH, make available the legal ownership documents of the F/EA.

F. The F/EA must comply with all of LDH's systems/software requirements, including the following:

1. The F/EA is required to transmit all non-proprietary data which is relevant for analytical purposes to LDH on a regular schedule in XML format.
 - a. Final determination of relevant data will be made by LDH based on collaboration between all parties;
 - b. The schedule for transmission of the data will be established by LDH and dependent on the needs of LDH related to the data being transmitted;
 - c. XML files for this purpose will be transmitted via secure file transfer protocol (SFTP) to LDH; and
 - d. Any other data or method of transmission used for this purpose must be approved via written agreement by all parties.
2. The F/EA is responsible for procuring and maintaining hardware and software resources which are sufficient for it to successfully perform the services detailed in this Rule.

3. The F/EA shall adhere to state and federal regulations and guidelines as well as industry standards and best practices for systems or functions required to support the requirements of this Rule.

4. Unless explicitly stated to the contrary, the F/EA is responsible for all expenses required to obtain access to LDH systems or resources which are relevant to successful completion of the requirements of this agreement. The F/EA is also responsible for expenses required for LDH to obtain access to the F/EA's systems or resources which are relevant to the successful completion of the requirements of this agreement. Such expenses are inclusive of hardware, software, network infrastructure, and any licensing costs.

5. The F/EA, for all confidential or protected health information, must be encrypted to federal information processing standards (FIPS) 140-2 standards when at rest or in transit.

6. The F/EA shall ensure appropriate protections of shared personally identifiable information (PII), in accordance with 45 CFR §155.260.

7. The F/EA shall ensure that its system is operated in compliance with the Centers for Medicare and Medicaid Services' (CMS) latest version of the minimum acceptable risk standards for exchanges (MARS-E) document suite.

8. Multi-factor authentication is a CMS requirement for all remote users, privileged accounts, and non-privileged accounts. In this context, remote user refers to staff accessing the network from offsite, normally with a client virtual private network (VPN) with the ability to access Medicaid and PII data.

9. A site-to-site tunnel is an extension of LDH's network. If the agent utilizes a VPN site-to-site tunnel and also has remote users who access CMS data, the agent is responsible for providing and enforcing multi-factor authentication.

10. The F/EA owned resources must be compliant with industry standard physical and procedural safeguards (NIST SP 800-114, NIST SP 800-66, NIST 800-53A, ISO 17788, etc.) for confidential information (i.e., health information technology for economic and clinical health (HITECH), health insurance portability and accountability act (HIPAA) part 164).

11. Any F/EA use of flash drives or external hard drives for storage of LDH data must first receive written approval from LDH and upon such approval shall adhere to FIPS 140-2 hardware level encryption standards.

12. All F/EA utilized computers and devices must:

- a. be protected by industry standard virus protection software that is automatically updated on a regular schedule;
- b. have installed all security patches which are relevant to the applicable operating system and any other system software; and
- c. have encryption protection enabled at the operating system level.

G. F/EAs shall, at a minimum:

1. demonstrate administrative capacity and the financial resources to provide all core elements of financial management services and ensure effective service delivery in accordance with state and federal requirements;
2. have appropriate F/EA staff attend trainings, as mandated by LDH;

3. document and maintain records in accordance with federal and state regulations governing confidentiality and program requirements; and

4. assure that the F/EA will not provide both financial management services and support coordination or personal care services in Louisiana.

H. Abuse and Neglect. Fiscal employer agencies shall establish policies and procedures relative to the reporting of abuse, neglect, exploitation, and extortion of participants, pursuant to the provisions of R.S. 15:1504-1505, R.S. 40:2009.20 and any subsequently enacted laws. The F/EA shall ensure that staff complies with these regulations.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1131. Fiscal Employer Agent Requirements

A. The F/EA must comply with requirements for financial management services in self-direction including, but not limited to:

1. verifying qualifications of employers and support workers;
2. processing payroll, including applying applicable withholdings and filing/paying all required state and federal income taxes;
3. disbursing payment to direct support workers;
4. setting up accounting records to track expenses;
5. setting up procedures for processing payroll and non-labor items;
6. maintaining all records related to the direct support worker's payroll, taxes, and benefits;
7. producing and sending required reports to LDH;
8. providing support to self-direction employers;
9. billing the LDH fiscal intermediary for Medicaid service claims and making refunds to LDH as appropriate;
10. resolving all billing discrepancies timely;
11. utilizing an LDH approved payroll calendar that addresses tax obligations; and
12. utilizing a system capable of capturing, recording, and tracking service, payroll, and tax information.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1133. Transfers and Discharges

A. Participant has the right to choose among the F/EAs certified by LDH and enrolled in the Louisiana Medicaid Program. This includes the right to transition to another F/EA.

B. Upon notice by the participant or his/her authorized representative that the participant has selected another F/EA or the participant has decided to discontinue participation in the self-direction program, the F/EA is responsible for planning and facilitating the participant's transfer or discharge.

C. The F/EA shall facilitate transfer to another F/EA when it ceases to operate or its Medicaid enrollment is terminated.

D. The transfer or transition responsibilities of the F/EA shall include:

1. working with the F/EA selected by the participant to transition by ensuring the following documents/information are submitted to the new provider: participant/employer wages, federal employment identification number (FEIN), and state unemployment tax act (SUTA) account information including username and password;

2. ensuring that there is only one F/EA for a given employer at any time;

3. adhering to specific processes and procedures when transitioning a participant to a new F/EA in accordance with all federal, state, and local laws; and

4. documenting the activities that are required to transition the participant to the receiving F/EA.

E. The F/EA shall not coerce or attempt to influence the participant's choice of F/EA. Failure to cooperate with the participant's decision to transfer to another F/EA will result in adverse action by LDH.

F. If the F/EA ceases to operate, the F/EA must give LDH at least 60 days written notice of its intent to close.

1. The transition plan for all participants served by the F/EA shall be completed within 10 working days of the notice to LDH of the F/EA's intent to close to minimize disruption of payroll services provided for employers.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1135. Staffing Requirements

A. F/EAs must maintain sufficient staff to comply with LDH regulations and policies for the self-direction program. The F/EA shall:

1. employ at least one staff member with a bachelor's degree in accounting and five years of applicable experience, or a master's degree in accounting and two years of applicable experience, or a master's degree in accounting and two years of applicable experience;

2. must have on staff a database administrator and sufficient programmers to ensure that systems comply with program requirements and are flexible enough to accommodate changes to those requirements; and

3. must designate a project director who will have day-to-day authority to manage the overall operations.

a. The project director will be available to LDH by telephone, e-mail, and video conferencing during regular business hours.

B. In the event LDH determines that the F/EA staffing levels do not conform to the above requirements, LDH shall advise the F/EA in writing and the F/EA shall submit a corrective action plan within five business days. This plan shall describe how the deficiency(ies) will be remedied and is subject to LDH approval.

C. The F/EA shall ensure all staff supporting the self-direction program are not excluded from participating in the Medicaid program by confirming each staff's name and social security number are not included on the Louisiana adverse actions list and Office of Inspector General (OIG) exclusions list.

D. Each F/EA shall ensure that staff is available at times which are convenient and responsive to the needs of participants and their families.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1137. Employer Rights

A. Each F/EA's written policies and procedures, at a minimum, shall ensure the employer's right to:

1. confidentiality;
2. privacy;
3. impartial access to F/EA services regardless of race, religion, sex, ethnicity, or disability;
4. access to the interpretive services, translated material and similar accommodations as appropriate;
5. access to his/her records upon the participant's written consent for release of information;
6. an explanation of the nature of services to be received;
7. file a complaint or grievance without retribution, retaliation, or discharge;
8. have access to information related to tracking their budget and service balance; and
9. discontinue services with their F/EA and choose another F/EA.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1139. Grievances

A. The F/EA shall establish and follow a written grievance procedure to be used to process complaints by employers, their family member(s), or a legal representative that is designed to allow employers to make complaints without fear of retaliation. The written grievance procedure shall be provided to the employer.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1141. Electronic Visit Verification (EVV) Requirements

A. The F/EA must have an electronic visit verification (EVV) system in place that complies with the 21st Century Cures Act. The F/EA's EVV system must verify the type of service provided, the individual receiving the service, the individual providing the service, date of service, location of the service (geolocation), and time the service begins and ends.

B. Services may be verified via smart phone, telephony (landline from participant's home), or a fixed visit verification device in the participant's home. Other methods of verification may be submitted to LDH for consideration and approval.

C. The F/EA is responsible for ensuring the system used meets the requirements specified in the LDH attestation for third party EVV systems.

1. The system shall have the capability to interface with LDH's EVV system.

2. The F/EA's system and its interface shall pass testing required by the data integration process prior to go-live.

3. The F/EA will be required to collect electronic check in/check out information including geolocation data in accordance with state requirements.

D. The F/EA must provide a user-friendly EVV system, including an alternate method of collecting time should the EVV system becomes unavailable.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1143. Employer Records

A. The F/EA shall store employer/employee records securely and protected in accordance with HIPAA requirements at the F/EA's place of business.

B. F/EAs shall maintain employer and employee records for at least six years or longer when required by state or federal law.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities, LR 49:

§1145. Emergency Preparedness

A. The F/EA, regardless of the architecture of its systems, shall develop and be continually ready to invoke an all hazards plan to protect the availability, integrity, and security of data during unexpected failures or disasters (either natural or man-made) to continue essential application or system functions during or immediately following failures or disasters.

B. The all hazards plan shall include a disaster recovery plan (DRP) and a business continuity plan (BCP). A DRP is designed to recover systems, networks, workstations, applications, etc., in the event of a disaster. A BCP shall focus on restoring the operational function of the organization in the event of a disaster and includes items related to information technology (IT), as well as operational items such as employee notification processes and the procurement of office supplies needed to do business in the emergency mode operation environment. The practice of including both the DRP and the BCP in the all hazards planning process is a best practice. At a minimum, the all hazards plan shall address the following scenarios:

1. the central computer installation and resident software are destroyed or damaged;

2. the system interruption or failure resulting from network, operating hardware, software, or operations errors that compromise the integrity of transaction that are active in a live system at the time of the outage; and

3. system interruption or failure resulting from network, operating hardware, software or operations errors that compromise the integrity of data maintained in a live or archival system.

C. The all hazards plan shall specify projected recovery times and data loss for mission-critical systems in the event

of a declared disaster. The following minimum criteria are required:

1. system restoration within 24 hours;
2. two physical locations for maintaining data; and
3. backups of all system data every 24 hours.

D. The F/EA shall annually test its plan through simulated disasters and lower level failures in order to demonstrate to LDH that it can restore system functions. In the event the F/EA fails to demonstrate through these tests that it can restore system functions, the F/EA shall be required to submit a corrective action plan to LDH describing how the failure shall be resolved within 10 business days of the conclusion of the test.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities. LR 49:

§1147. Fiscal Employer Agent Monitoring

A. F/EAs shall be monitored on an on-going basis as outlined in the performance agreement.

B. F/EAs shall offer full cooperation with LDH during the monitoring process.

C. Responsibilities of the F/EA in the monitoring process include, but are not limited to, providing policy and procedure manuals, employer/employee records, and other documentation as requested.

D. F/EAs shall cooperate with any audit requests from state or federal agencies.

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, the Office of Aging and Adult Services, and the Office for Citizens with Developmental Disabilities. 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, 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 July 31, 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 July 10, 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 July 27, 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 July 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers—Fiscal Employer Agent Standards for Participation

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

It is anticipated that implementation of this proposed rule will result in programmatic fiscal costs to the state of approximately \$1,620 for FY 22-23, \$727,021 for FY 23-24, and \$1,092,091 for FY 24-25. It is anticipated that \$3,240 (\$1,620 SGF and \$1,620 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 revenue collections by approximately \$1,620 for FY 22-23, \$1,586,123 for FY 23-24, and \$2,313,243 for FY 24-25. It is anticipated that \$1,620 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule adopts provisions establishing the standards for participation for fiscal employer agents (F/EAs) in home and community-based services waiver programs. F/EAs currently provide financial management services (FMS) for self-directed home and community-based waiver services

administered by the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities through an administrative contract with the department. Under the current arrangement, providers may change every three years due to the state's contracting requirements; however, Medicaid enrolled providers may continue providing services as long as they meet program requirements, resulting in more stability and familiarity with families that participate in self-direction. This proposed rule eliminates the administrative contracting process, establishes FMS as a waiver service, and allows F/EAs to enroll in Medicaid to ensure greater stability among providers that support the self-direction program. Implementation of this proposed rule is anticipated to increase expenditures in the Medicaid program by approximately \$3,240 for FY 22-23, \$2,313,144 for FY 23-24, and \$3,405,334 for FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2306#040

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office




State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 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:V.Chapter 24 – Inpatient Hospital Services – Out-of-State Hospitals

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Inpatient Hospital Services – Out-of-State Hospitals, LAC 50:V.Chapter 24.

A Notice of Intent on the proposed amendments was published in the June 20, 2023 issue of the *Louisiana Register* (LR 49:1167). 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 June 20, 2023, Notice of Intent when it is published as a final rule in the September 20, 2023, issue of the *Louisiana Register*.

Please contact Tizi Robinson, Tizi.Robinson@la.gov, and Debbie Gough, Debbie.Gough@la.gov, if you have any questions or require additional information about this matter.

Cc: Tara LeBlanc, Medicaid Director, LDH
Tangela Womack, 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

1. medical services are needed because of a medical emergency;
2. medical services are needed and the beneficiaries' health would be endangered if they were required to travel to their state of residence;
3. the state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; or
4. it is general practice for beneficiaries in a particular locality to use medical resources in another state.

B. Hospitals located in counties in Mississippi, Arkansas, and Texas that border the state of Louisiana are referred to as trade area hospitals.

C. Trade area hospitals that are unable to fully treat presenting Louisiana beneficiaries shall transfer patients to the Louisiana hospital within the closest proximity with available 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 49:

§2403. Reimbursement Methodology

A. Effective for dates of service on or after September 20, 2023, payment for all out-of-state inpatient services, other than organ transplants, shall be made at the Louisiana in-state prospective peer group rate in effect for the corresponding type of non-teaching hospital or specialty carve out service.

1. Separate prospective per diem rates will be paid for out-of-state inpatient services provided in acute care general hospitals, psychiatric hospitals and services, rehabilitation hospitals, long term acute care hospitals, children's hospitals, nursery services, neonatal intensive care services, pediatric intensive care services, and burn unit intensive care services.

B. Effective for dates of service on or after September 20, 2023, payment for inpatient organ transplant service provided by out-of-state hospitals shall be paid as follows:

1. 40 percent of allowable covered billed charges for beneficiaries ages 21 and above; or
2. 60 percent of allowable covered billed charges for beneficiaries under age 21.

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

NOTICE OF INTENT

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

Inpatient Hospital Services
Out-of-State Hospitals
(LAC 50:V.2401 and 2403)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:V.Chapter 24 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 is required under 42 CFR §431.52 to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana. The department has determined that the current reimbursement rates for inpatient services furnished by out-of-state hospitals are not in alignment with those of in-state hospitals.

In compliance with 42 CFR §431.52, the Department of Health, Bureau of Health Services Financing proposes to adopt provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those services with current in-state inpatient per diem rates for like hospitals/services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals Services

Chapter 24. Out-of-State Hospitals

§2401. General Provisions

A. Effective for dates of service on or after September 20, 2023, payment will be made to out-of-state hospitals for provision of inpatient services which meet at least one of the following conditions:

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, or on the direct or indirect cost to the provider, but may negatively impact on the provider's ability to provide the same level of service as described in HCR 170, if the reimbursement rate change results in decreased payments to the provider.

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 July 31, 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 July 10, 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 July 27, 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 July 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

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

**RULE TITLE: Inpatient Hospital Services
Out-of-State Hospitals**

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

It is anticipated that implementation of this proposed rule will increase state costs by approximately \$324 for FY 22-23 and reduce state costs by approximately \$9,708,338 for FY 23-24, and \$14,274,036 for FY 24-25. It is anticipated that \$648 (\$324 SGF and \$324 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 this proposed rule will increase federal revenue collections by approximately \$324 for FY 22-23 and reduce federal revenue collections by approximately \$21,180,422 for FY 23-24 and \$30,234,964 FY 24-25. It is anticipated that \$324 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule adopts provisions governing medically necessary inpatient services furnished to Louisiana Medicaid beneficiaries by out-of-state hospitals in order to align the reimbursement rates for those services with current in-state inpatient per diem rates for like hospitals/services. The proposed rule complies with 42 CFR §431.52, which requires the state to pay for services furnished in another state to the same extent that it would pay for in-state services for Medicaid beneficiaries that reside in Louisiana. This will allow the beneficiaries to maintain access to medically necessary out-of-state inpatient hospital services. Implementation of this proposed rule is anticipated to decrease expenditures for inpatient out-of-state hospital services by approximately \$30,888,760 for FY 23-24 and \$44,509,000 for FY 24-25, which may negatively impact providers if the reimbursement rate change results in decreased payments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2306#041

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 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, JD
Secretary

Re: Second Report to LAC 50:I.3113 – Managed Care for Physical and Behavioral Health –
Hospital Directed Payments

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Managed Care for Physical and Behavioral Health – Hospital Directed Payments, LAC 50:I.3113.

A Notice of Intent on the proposed amendments was published in the June 20, 2023 issue of the *Louisiana Register* (LR 49:1168). 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 June 20, 2023, Notice of Intent when it is published as a final rule in the September 20, 2023, issue of the *Louisiana Register*.

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

Cc: Tara LeBlanc, Medicaid Director, LDH
Tangela Womack, Medicaid Deputy Director, LDH
Kolynda Parker, Medicaid Deputy Director, LDH
Brandon Bueche, Medicaid Program Manager, LDH
Kimberly Sullivan, Executive Counsel, 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**

**Managed Care for Physical and Behavioral Health
Hospital Directed Payments
(LAC 50:1.3113)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:1.3113 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 adopted provisions governing directed payments to qualifying hospitals that participate in the Healthy Louisiana program and contract with the Medicaid managed care organizations (MCOs) to provide inpatient and outpatient services to MCO enrollees (*Louisiana Register*, Volume 49, Number 2). The department promulgated an Emergency Rule to amend the provisions governing directed payments in order to reserve the right to discontinue interim directed payments to any hospital whose projected recoupment is greater than 50 percent or who discontinues

operations during or prior to the directed payment contract period (*Louisiana Register*, Volume 49, Number 6). This proposed Rule continues the provisions of the May 15, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Managed Care for Physical and Behavioral Health

Chapter 31. General Provisions

§3113. Directed Payments

A. - A.4.a. ...

b. The department reserves the right to discontinue the interim directed payments to any hospital whose projected recoupment due to shifts in utilization is greater than 50 percent of their estimated interim directed payments or any hospital who discontinues operations during or prior to the directed payment contract period.

5. - 7.a....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:245 and Title XIX of the Social Security Act

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 49:264 (February 2023), amended 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, 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 July 31, 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 July 10, 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 July 27, 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 July 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Managed Care for Physical and Behavioral Health—Hospital Directed Payments

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 \$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)

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 \$270 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule continues the provisions of the May 15, 2023 Emergency Rule, which amended the provisions governing directed payments to qualifying hospitals that participate in the Healthy Louisiana program and contract with the Medicaid managed care organizations in order to reserve the right to discontinue interim directed payments to any hospital whose projected recoupment is greater than 50 percent or which discontinues operations during or prior to the directed payment contract period. It is anticipated that implementation of this proposed rule will not result in costs to hospitals in FY 22-23, FY 23-24, and FY 24-25, because the hospitals are receiving payments. However, the proposed rule ensures that

payments are not made to hospitals that are no longer operating and that others are not overpaid based on actual utilization.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2306#042

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 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, JD
Secretary

Re: Second Report to LAC 50:XXVII.Chapter 3 – Medical Transportation Program –
Emergency Medical Transportation

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 – Emergency Medical Transportation, LAC 50:XXVII.Chapter 3.

A Notice of Intent on the proposed amendments was published in the June 20, 2023 issue of the *Louisiana Register* (LR 49:1170). 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 June 20, 2023, Notice of Intent when it is published as a final rule in the September 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
Tangela Womack, Medicaid Deputy Director, LDH
Kolynda Parker, Medicaid Deputy Director, LDH
Brandon Bueche, Medicaid Program Manager, LDH
Kimberly Sullivan, Executive Counsel, LDH
Veronica Dent, Medicaid Program Manager, LDH
Bethany Blackson, Legislative Liaison, LDH
Catherine Brindley, Editor, *Louisiana Register*, Office of the State Register

cost variability across these provider types and to maintain access to care through alignment with historic payment levels.

1. The agency's fee schedule rate, set as of July 1, 2023, is effective for services provided on or after that date. All rates are published on the agency's website at: <https://www.lamedicaid.com>.

2. The fee schedule was established as a function of historical rates in effect as of January 1, 2023 plus an enhancement which was calculated to achieve total fee schedule reimbursement as a percentage of average commercial rates (ACR), with the clarifications listed within Subparagraph a through c below:

a. governmental ambulance providers include those ambulance providers who are owned or operated by a public organization such as state, federal, parish, or city entities;

b. New Orleans-based governmental ambulance providers include ambulance providers located within the city of New Orleans; and

c. private ambulance transportation providers include corporations, limited liability companies, partnerships, or sole proprietors. Private providers must comply with all state laws and the regulations of any governing state agency, commission, or local entity to which they are subject as a condition of enrollment and continued participation in the Medicaid program.

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 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1248 (June 2010), LR 36:2564 (November 2010), LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§327. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments may be issued to qualifying ambulance providers for emergency medical transportation services rendered during the quarter.

B. - E.7. ...

8. The department may reimburse providers based on the following criteria.

a. ...

b. For all other ambulance service providers identified in Paragraph E.1, reimbursement may be up to 80 percent of the provider's average commercial rate calculated in Paragraph E.7.

F. - F.2. ...

G. The supplemental payment may be made effective for emergency medical transportation provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall be made no less than every three years.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Medical Transportation Program Emergency Medical Transportation (LAC 50:XXVII.Chapter 3)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50: XXVII.Chapter 3 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) requires reimbursement for emergency ambulance services to transition from the Full Medicaid Pricing program to an approved federal supplemental payment program by July 1, 2023. In compliance with CMS requirements, the Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing reimbursement in the Medical Transportation Program in order to align the reimbursement rates established for emergency ambulance services and providers with current practice for Medicaid managed care and fee-for-service (*Louisiana Register*, Volume 49, Number 5). This proposed Rule is being promulgated to continue the provisions of the July 1, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter A. Reserved.

Subchapter B. Ground Transportation

§325. Reimbursement

A. The Medicaid reimbursement for ground ambulance services is the rate established in the state fee schedule for emergency ambulance transport, basic life support, advanced life support and mileage, oxygen, intravenous fluids, and disposable supplies administered during the emergency ambulance transport minus the amount paid by any liable third party coverage.

B. - J. ...

K. Effective for dates of service on or after July 1, 2023, the reimbursement rates for emergency ground ambulance transportation services shall be reimbursed based on the Louisiana Medicaid fee schedule.

EXCEPTION: Except as otherwise noted in the plan, state-developed fee schedule rates are established separately for governmental, New Orleans-based governmental, and private providers of ambulance transportation services to account for

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:1530 (August 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§331. Enhanced Reimbursements for Qualifying Emergency Ground Ambulance Service Providers

A. Emergency Medical Transportation

1. Qualifying emergency ambulance service providers assessed a fee as outlined in LAC 48:I.4001.E.1.a-b may receive enhanced reimbursement for emergency ground ambulance transportation services rendered during the quarter through the Supplemental Payment Program described in the Medicaid State Plan.

2. Effective for dates of service on or after July 1, 2019, qualifying emergency ambulance service providers assessed a fee as outlined in LAC 48:I.4001.E.1.a-d may receive enhanced reimbursement for non-emergency ground ambulance transportation services rendered during the quarter through the Supplemental Payment Program described in the Medicaid State Plan.

B. - B.4. ...

C. Payment Methodology

1. Payment may include non-emergency ground ambulance services after July 1, 2019. The enhanced reimbursement to each qualifying emergency ground ambulance service provider shall not exceed the sum of the difference between the Medicaid payments otherwise made to these providers for the provision of emergency and non-emergency ground ambulance transportation services and the average amount that would have been paid at the equivalent community rate.

2. - 3.h....

D. Effective Date of Payment

1. The enhanced reimbursement payment may be made effective for emergency ground ambulance transportation services provided on or after August 1, 2016, and for non-emergency ground transportation services provided after July 1, 2019. This payment is based on the average amount that would have been paid at the equivalent community rate.

D.2. - E.1. ...

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 42:1890 (November 2016), amended LR 45:1598 (November 2019), LR 49:

Subchapter C. Aircraft Transportation

§351. Standards for Participation

A. Rotor winged (helicopters) and fixed winged emergency aircraft must be certified by the Department of Health, Bureau of Health Services Financing in order to receive Medicaid reimbursement. All air ambulance services must be provided in accordance with state laws and regulations governing the administration of these services.

B. ...

C. Prior Approval. Prior approval shall not be required for emergency air ambulance transportation services, including mileage. Approval shall be done during post payment review and shall not be completed prior to service delivery. Claims for payment of emergency air ambulance transportation services are received and reviewed retrospectively. The clinical documentation for each

emergency air ambulance transportation service shall not be required for submission concurrent with the claim. If required, clinical documentation shall be required post claim submission.

1. Air ambulance claims will be reviewed and a determination will be made based on the following requirements. Air ambulance services are covered only if:

a. speedy admission of the beneficiary is essential and the point of pick-up of the beneficiary is inaccessible by a land vehicle; or

b. great distance or other obstacles are involved in getting the beneficiary to the nearest hospital with appropriate 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 and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:70 (January 2009), amended by the Department of Health, Bureau of Health Services Financing, LR 49:

§353. Reimbursement

A. - B. ...

C. If a ground ambulance must be used for part of the transport, the ground ambulance provider will be reimbursed separately according to the provisions governing emergency ground transportation.

D. - I.2. ...

J. The reimbursement rates for emergency and non-emergency, rotor winged and fixed winged air ambulance transportation services shall be reimbursed based on the Louisiana Medicaid fee schedule. These rates include both in state and out-of-state air ambulance transportation. The agency's fee schedule rate was set as of January 1, 2022 and is effective for services provided on or after that date. All rates are published on the agency's website at: <https://www.lamedicaid.com>.

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 35:70 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010), amended LR 37:3029 (October 2011), LR 39:1285 (May 2013), LR 40:1379 (July 2014), LR 42:277 (February 2016), amended by the Department of Health, Bureau of Health Service Financing, LR 49:

§355. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments may be issued to qualifying ambulance providers for emergency medical air transportation services rendered during the quarter.

B. - E.7. ...

8. The department may reimburse providers based on the following criteria.

a. ...

b. For all other ambulance service providers identified in E.1, reimbursement may be up to 80 percent of the provider's average commercial rate calculated in Paragraph E.7.

F. - F.2. ...

G. The supplemental payment may be made effective for air ambulance services provided on or after September 20, 2011. This payment is based on the average amount that

would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall not be made less often than every three years.

H. ...

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 40:1531 (August 2014), amended 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 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 July 31, 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 July 10, 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 July 27, 2023 in Room 173 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 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medical Transportation Program Emergency Medical Transportation

- 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 \$1,404 (\$702 SGF and \$702 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 \$702 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)
This proposed rule continues the provisions of the July 1, 2023 Emergency Rule, which amended the provisions governing reimbursement in the Medical Transportation Program in order to align the reimbursement rates established for emergency ambulance services and providers with current practice for Medicaid managed care and fee-for-service. This complies with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requirement that reimbursement for these services transition from the Full Medicaid Pricing program to an approved federal supplemental payment program. Implementation of this proposed rule is not anticipated to result in costs or benefits to emergency medical transportation providers or small businesses and will not result in a fiscal impact in FY 22-23, FY 23-24, and FY 24-25.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2306#043

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office



State of Louisiana
Louisiana Department of Health
Office of the Secretary

August 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, JD
Secretary

Re: Second Report to LAC 50:IX.Chapter 13 – Professional Services Program –
Physician Directed Treatment-in-Place Ambulance Services

Pursuant to the Louisiana Administrative Procedure Act, the Louisiana Department of Health, Bureau of Health Services Financing, submits its second report regarding the Professional Services Program – Physician Directed Treatment-in-Place Ambulance Services, LAC 50:IX.Chapter 13

A Notice of Intent on the proposed amendments was published in the June 20, 2023 issue of the *Louisiana Register* (LR 49:1173). 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 June 20, 2023, Notice of Intent when it is published as a final rule in the September 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
Tangela Womack, Medicaid Deputy 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

Professional Services Program Physician Directed Treatment-in-Place Ambulance Services (LAC 50:IX.1301, 1303, and 1305)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.Chapter 13 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 promulgated Emergency Rules which allowed reimbursement, to qualified ambulance providers, throughout the duration of the Coronavirus Disease 2019 (COVID-19) public health emergency for initiation and facilitation of physician directed treatment-in-place services via telehealth. The services are provided on site without transport, within established treatment protocols, and under the direct supervision of a qualified provider (*Louisiana Register*, Volume 46, Number 7 and Volume 47, Number 11). The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) waived requirements in order to expand the types of health care professionals eligible to bill for telehealth services provided from a distant site.

As a result of the CMS waiver, the department promulgated an Emergency Rule which adopted provisions in the Professional Services Program to continue to provide reimbursement for physician directed treatment-in-place ambulance services after the COVID-19 public health emergency ended on May 11, 2023 (*Louisiana Register*, Volume 49, Number 5). This proposed Rule is being promulgated in order to continue the provisions of the May 12, 2023 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 13. Physician Directed Treatment-In-Place Ambulance Services

§1301. General Provisions

A. Effective for dates of service on or after May 12, 2023, the Louisiana Medicaid Program provides coverage for initiation and facilitation of telehealth services by qualified Louisiana Medicaid enrolled ambulance providers.

B. Ambulance providers interested in offering physician directed treatment-in-place telehealth services must complete the following:

1. enroll as a CMS ET3 model participant;
2. enter into a partnership with a qualified, Louisiana Medicaid enrolled healthcare provider to furnish treatment-in-place telehealth services to Louisiana Medicaid beneficiaries; and
3. notify the Department of Health of its partnerships with each telehealth provider.

C. Reimbursement for initiation and facilitation of telehealth services shall be made according to the established physician directed treatment-in-place telehealth service fee schedule or billed charges, whichever is the lesser amount.

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:

§1303. Scope of Services

A. Initiation and facilitation of physician directed treatment-in-place telehealth services are performed by Louisiana Medicaid enrolled ambulance providers on site, with no transport, using audio and video telecommunications systems that permit real-time communication between a qualified, Medicaid enrolled, licensed medical practitioner and the beneficiary.

B. All services provided by ambulance providers during the initiation and facilitation of the physician directed treatment-in-place intervention are covered by the associated BLS-E, emergency base rate, or the ALS1-E, Level 1 emergency base rate.

C. Ambulance providers are not eligible to submit a claim for reimbursement or receive payment for other services (except for supplies) at the scene.

D. If a beneficiary must be transported to an emergency department (ED) due to poor internet connection, which resulted in a failed physician directed treatment-in-place encounter, or the beneficiary's condition deteriorates, the ambulance provider may submit a claim for reimbursement and receive compensation for the transport to the ED, but not for initiation and facilitation of the telehealth service.

E. The entity seeking reimbursement for the corresponding physician directed treatment-in-place telehealth service must be an enrolled Louisiana Medicaid provider.

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:

§1305. Reimbursement

A. Reimbursement to the ambulance providers for initiation and facilitation of the physician directed treatment-in-place telehealth service requires a corresponding treatment-in-place telehealth service. The corresponding treatment-in-place telehealth service is demonstrated via a Louisiana Medicaid paid treatment-in-place telehealth service claim.

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 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 July 31, 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 July 10, 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 July 27, 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 July 10, 2023. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing

Stephen R. Russo, JD
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Professional Services Program Physician Directed Treatment-in-Place Ambulance Services

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 22-23. 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 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 \$378 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, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule continues the provisions of the May 12, 2023 Emergency Rule, which adopted provisions in the Professional Services Program to continue to provide reimbursement for physician directed treatment-in-place ambulance services after the Coronavirus Disease 2019 (COVID-19) public health emergency (PHE) ended on May 11, 2023. Reimbursement to qualified ambulance providers was allowed throughout the duration of the COVID-19 PHE for initiation and facilitation of physician directed treatment-in-place services via telehealth. The services are provided on site without transport, within established treatment protocols, and under the direct supervision of a qualified provider. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) has now waived requirements to expand the types of healthcare professionals eligible to bill for telehealth services from a distant site. As a result of the CMS waiver, the department is adding this provision to the administrative rule. This proposed rule will allow Medicaid beneficiaries that require ambulance services to continue to receive treatment on site. It is anticipated that implementation of this proposed rule will not result in costs to ambulance service providers or small businesses in FY 22-23, FY 23-24, and FY 24-25.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Tara A. LeBlanc
Medicaid Executive Director
2306#044

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office