

**Public Comments**

Interested persons may submit written comments to Tasheka Dukes, RN, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Dukes is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 31, 2022.

**Public Hearing**

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on May 10, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 26, 2022 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after May 10, 2022. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Home Health Agencies  
Licensing Standards**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 21-22. It is anticipated that \$9,288 will be expended in FY 21-22 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections since the licensing fees, in the same amounts, will continue to be collected.

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

This proposed rule, in compliance with Act 181 of the 2021 Regular Session of the Louisiana Legislature, amends the provisions governing the licensing of home health agencies in order to: 1) expand the type of practitioners and qualifications for administrators; 2) update and clarify definitions, governing body and patient rights provisions, and licensing requirements; and 3) add quality assessment and performance improvement requirements. This proposed rule will be beneficial to home health agencies by expanding and clarifying the licensing requirements. It is anticipated that implementation of this

proposed rule will not result in costs to home health agencies in FY 21-22, FY 22-23 and FY 23-24.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Tasheka Dukes, RN  
Deputy Assistant Secretary  
2204#041

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

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

**Outpatient Hospital Services  
(LAC 50:V.Subpart 5)**

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.Subpart 5 and repeal the following uncodified Rules in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act:

| Register Date     | Title   | Register Volume, Number | Page Number |
|-------------------|---|-------------------------|-------------|
| August 20, 1983   | Change in Limits for Outpatient Hospital Services   | Volume 9, Number 8      | 551         |
| August 20, 1983   | Discontinuance of Reimbursement to Emergency Access Hospitals                             | Volume 9, Number 8      | 552         |
| December 20, 1985 | MAP Outpatient Surgeries  | Volume 11, Number 12    | 1147        |
| November 20, 2000 | Outpatient Hospital Services - Medicare Part B Claims                                     | Volume 26, Number 11    | 2622        |
| July 20, 2003     | Outpatient Hospital Laboratory Services   | Volume 29, Number 7     | 1096        |
| December 20, 2003 | Hospital Program - Out-of State Hospitals - Outpatient Services - Reimbursement Reduction | Volume 29, Number 12    | 2802        |
| December 20, 2004 | Hospital Program - Outpatient Surgery Services - HIPAA Implementation                     | Volume 30, Number 12    | 2830        |
| February 20, 2007 | Hospital Licensing Standards  | Volume 33, Number 2     | 284         |

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 an Emergency Rule which amended the provisions governing outpatient hospital services in order to provide reimbursement for laboratory testing for Coronavirus Disease 2019 (COVID-19) separately from outpatient hospital surgery fee schedule payments

(Louisiana Register, Volume 48, Number 2). This proposed Rule is being promulgated in order to continue the provisions of the February 10, 2022 Emergency Rule, repeal the above listed uncodified rules, and to amend the provisions governing outpatient hospitals in order to update reimbursement to out-of-state hospitals for consistency with in-state rates.

## **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part V. Hospital Services**

##### **Subpart 5. Outpatient Hospital Services**

##### **Chapter 53. Outpatient Surgery**

###### **Subchapter A. General Provisions**

###### **§5301. Payment for Outpatient Surgery Services**

A. Payment for outpatient surgery services is a flat rate in accordance with the published fee schedule. The flat rate payment covers all services provided during the outpatient surgical admission. There shall be no cost settlement for outpatient surgery services except for the specific hospital types identified in Subchapter B of this Chapter.

1. Effective for dates of service on or after February 10, 2022, the Medicaid Program shall provide reimbursement for Coronavirus Disease 2019 laboratory testing in addition to the outpatient surgery fee schedule flat fee reimbursement 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 48:

###### **Subchapter B. Reimbursement Methodology**

###### **§5313. Non-Rural, Non-State Hospitals**

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

E. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

F. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

G. - M.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 and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2534 (December 2017), LR 44:2166 (December 2018), LR 45:1773 (December 2019), LR 46:1685 (December 2020), LR 48:

###### **Chapter 55. Clinic Services**

###### **Subchapter A. General Provisions**

###### **§5501. Payment for Outpatient Hospital Clinic Services**

A. Payment for outpatient hospital clinic services is a flat rate in accordance with the published fee schedule. There shall be no cost settlement for outpatient clinic services except for the specific hospital types identified in Subchapter B 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, LR 48:

###### **Subchapter B. Reimbursement Methodology**

###### **§5513. Non-Rural, Non-State Hospitals**

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

E. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

F. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

G. - L.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 and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:1773 (December 2019), LR 48:

###### **Chapter 57. Laboratory Services**

###### **Subchapter A. General Provisions**

###### **§5701. Payment for Outpatient Hospital Laboratory Services**

A. Payment for outpatient hospital laboratory services is a flat rate in accordance with the published fee schedule. There shall be no cost settlement for outpatient laboratory 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 48:

###### **Subchapter B. Reimbursement Methodology**

###### **§5713. Non-Rural, Non-State Hospitals**

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

E. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

F. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

G. - L.2. ...

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 Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2167 (December 2018), LR 45:1773 (December 2019), LR 48:

###### **Chapter 59. Rehabilitation Services**

###### **Subchapter A. General Provisions**

###### **§5901. Payment for Outpatient Hospital Rehabilitation Services**

A. Payment for outpatient hospital rehabilitation services is a flat rate in accordance with the published fee schedule. There shall be no cost settlement for outpatient rehabilitation

services except for the specific hospital types identified in Subchapter B 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, LR 48:

## **Chapter 61. Other Outpatient Hospital Services**

### **Subchapter A. General Provisions**

#### **§6101. Payment for Other Outpatient Hospital Services**

A. Interim payment for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgery services, rehabilitation services, and outpatient hospital clinic services shall be at a hospital-specific cost to charge ratio. Final payment shall be a percentage of cost amount as detailed for each type of hospital in Subchapter B of this Chapter. The percentage shall be applied to cost for these services as calculated based on the finalized cost report.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:

### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - D. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

E. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

F. ...

1. Small rural hospitals as defined in R.S. 40:1189.3 shall be exempted from this rate reduction.

G. - L.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 and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:2168 (December 2018), LR 45:1774 (December 2019), LR 48:

## **Chapter 69. Out-of-State Hospitals**

### **Subchapter A. Reserved**

### **Subchapter B. Reimbursement**

#### **§6915. Reimbursement Methodology**

A. Reimbursement for all Louisiana Medicaid recipients who receive outpatient services in an out-of-state hospital, including those recipients up to the age of 21, shall be calculated as follows:

1. Outpatient services provided in out-of-state hospitals that are subject to a fee schedule in-state shall be paid at the fee schedule amounts utilized for in-state non-rural, non-state hospitals.

2. Outpatient services provided in out-of-state hospitals that are not subject to a fee schedule in-state shall be paid at the annual average cost to charge ratio calculated from the filed Medicaid cost reports for in-state non-rural, non-state hospitals multiplied by the percent of allowable cost as specified in §6115 that is in effect for the applicable time period for in-state non-rural, non-state hospitals. This ratio shall be applied to the billed charges for covered claims

submitted by out-of-state hospitals to determine payment for non-fee schedule 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 48:

## **Chapter 71. Medicare Part B Claims for Medicaid Eligible Recipients**

### **Subchapter A. Reserved**

### **Subchapter B. Reimbursement**

#### **§7115. Reimbursement Methodology**

A. To determine the amount that Medicaid will reimburse on a claim for a Medicaid recipient who is also eligible for Medicare Part B, the Medicare claim payment is compared to the Medicaid rate on file for the revenue or procedure codes on the Medicare Part B claims for outpatient hospital services. If the Medicare payment exceeds the Medicaid rate, the claim is adjudicated as a paid claim with a zero payment. If the Medicaid rate exceeds the Medicare payment, the claim is reimbursed at the lesser of the co-insurance and deductible or up to the Medicaid maximum payment. If the Medicaid payment is reduced or eliminated as a result of the Medicare/Medicaid payment comparison, the amount of the Medicare payment plus the amount of the Medicaid payment, if any, shall be considered to be payment in full for the service.

B. The recipient does not have any legal liability to make payment for the service.

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

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 48:

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

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have 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,

but may increase direct or indirect cost to the provider to provide the same level of service due to the reduction of Medicaid payments for the service. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the reduction in payments adversely impacts the provider's financial standing.

#### Public Comments

Interested persons may submit written comments to Patrick Gillies, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. Mr. Gillies is responsible for responding to inquiries regarding this proposed Rule. The deadline for submitting written comments is at 4:30 p.m. on May 31, 2022.

#### Public Hearing

Interested persons may submit a written request to conduct a public hearing by U.S. mail to the Office of the Secretary ATTN: LDH Rulemaking Coordinator, Post Office Box 629, Baton Rouge, LA 70821-0629; however, such request must be received no later than 4:30 p.m. on May 10, 2022. If the criteria set forth in R.S. 49:953(A)(2)(a) are satisfied, LDH will conduct a public hearing at 9:30 a.m. on May 26, 2022 in Room 118 of the Bienville Building, which is located at 628 North Fourth Street, Baton Rouge, LA. To confirm whether or not a public hearing will be held, interested persons should first call Allen Enger at (225) 342-1342 after May 10, 2022. If a public hearing is to be held, all interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing. In the event of a hearing, parking is available to the public in the Galvez Parking Garage, which is located between North Sixth and North Fifth/North and Main Streets (cater-corner from the Bienville Building). Validated parking for the Galvez Garage may be available to public hearing attendees when the parking ticket is presented to LDH staff at the hearing.

Dr. Courtney N. Phillips  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Outpatient Hospital Services

#### 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 \$10,944 for FY 21-22 as a result of the reimbursement for COVID-19 laboratory testing separately from the outpatient hospital surgery flat fee reimbursement amount, and will reduce state costs by approximately \$789,304 for FY 22-23 and \$887,167 for FY 23-24. It is anticipated that \$1,512 (\$756 SGF and \$756 FED) will be expended in FY 21-22 for the state's administrative expense for promulgation of this proposed rule and final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$27,641 for FY 21-22, and decrease federal revenue collections by approximately \$2,666,175 for FY 22-23 and \$2,996,745 for FY 23-24. It is anticipated that \$756 will be collected in FY 21-22 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the February 10, 2022 Emergency Rule which amended the provisions governing outpatient hospital services in order to provide reimbursement for laboratory testing for Coronavirus Disease 2019 (COVID-19) separately from outpatient hospital surgery fee schedule payments. Secondly, the proposed rule amends the provisions governing reimbursement to out-of-state hospitals to ensure consistency with in-state rates. In addition, it repeals outdated, uncodified outpatient hospital rules. Beneficiaries and providers of outpatient hospital services will benefit from implementation of this proposed rule since it provides coverage for COVID-19 laboratory tests. It is anticipated that implementation of this proposed rule will increase expenditures in the Medicaid program by approximately \$37,073 for FY 21-22, \$139,500 for FY 22-23, and \$139,500 for FY 23-24 due to Medicaid reimbursement for COVID-19 laboratory testing separately from the outpatient hospital surgery flat fee reimbursement amount, but will reduce expenditures by approximately \$3,594,979 for FY 22-23 and \$4,023,412 for FY 23-24 as a result of the alignment of out-of-state hospital reimbursement rates with in-state rates. This will result in a net savings of \$3,455,479 for FY 22-23 and \$3,883,912 for FY 23-24.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Patrick Gillies  
Medicaid Executive Director  
2204#042

Evan Brasseaux  
Interim Deputy Fiscal Officer  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health Office of Public Health

Marine and Fresh Water Animal Food Products  
(LAC 51:IX.101, 123, 125, 127, 129, 133, 135,  
141, 143, 145, 147, 149, 303, 311, 313, 330,  
331, 339, 343, 501, 503, 505, 507 and 509)

Under the authority of R.S. 40:4 and 40:5, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Louisiana Department of Health, Office of Public Health (LDH/OPH), intends to amend certain Sections of Chapters 1 and 3 of Part IX (Marine and Fresh Water Animal Food Products) of Title 51 (Public Health—Sanitary Code). In addition, Chapter 5 is proposed to be promulgated as an addition to this Part to address the regulation of molluscan shellfish aquaculture.

#### Title 51

#### PUBLIC HEALTH—SANITARY CODE

#### Part IX. Marine and Fresh Water Animal Food Products

#### Chapter 1. Shellfish Growing Areas

#### §101. Definitions

[formerly paragraph 9:001]

#### A. ...

*Adverse Pollution Conditions*—a state or situation caused by meteorological, hydrological, or seasonal events