

NOTICE OF INTENT
Department of Health
Office of Public Health

List of Conditions that shall deem an unborn child “Medically Futile”
(LAC 48, Part 1, Chapter 4, Section 101)

Under the authority of R.S. 14:87.1, and in accordance with R.S. 49:950 *et seq.*, the Administrative Procedure Act, notice is hereby given that the Louisiana Department of Health, Office of Public Health (LDH-OPH), intends to promulgate the following rule in LAC Title 48, Part I, Subpart 1, Chapter 4. As required by Act 545 of the 2022 Regular Session of the Louisiana Legislature, the following rule establishes the exclusive list of anomalies, diseases, disorders, and other conditions that shall deem an unborn child “medically futile” for purposes of R.S. Title 14, Chap. 1, Part V, Subpart A.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 1. General

Chapter 4. Medically Futile Pregnancies

§101. Conditions that shall deem an unborn child “Medically Futile”

A. Pursuant to Act 545 of the 2022 Regular Session of the Louisiana Legislature, the Department of Health establishes the following exclusive list of anomalies, diseases, disorders, and other conditions that shall deem an unborn child “medically futile” for purposes of R.S. Title 14, Chap. 1, Part V, Subpart A:

1. achondrogenesis;
2. acrania;
3. anencephaly;
4. arcadia;
5. body stalk anomaly;
6. campomelic dysplasia;
7. craniorachischisis;
8. dysencephalia splanchnocystica (Meckel-Gruber syndrome);
9. ectopia cordis;
10. exencephaly;
11. gestational trophoblastic neoplasia;
12. holoprosencephaly;
13. hydrops fetalis;
14. iniencephaly;
15. perinatal hypophosphatasia;
16. osteogenesis imperfecta (type 2);
17. renal agenesis (bilateral);
18. short rib polydactyly syndrome;

19. sirenomelia;
20. thanatophoric dysplasia;
21. triploidy;
22. trisomy 13;
23. trisomy 16 (full);
24. trisomy 18;
25. trisomy; and
26. a profound and irremediable congenital or chromosomal anomaly existing in the unborn child that is incompatible with sustaining life after birth in reasonable medical judgment as certified by two physicians that are licensed to practice in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:87.1

HISTORICAL NOTE: Promulgated by the Department of Health, Office of Public Health, LR 48:

Family Impact Statement

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments on the proposed rule. Such comments must be received no later than Tuesday, October 25, 2022 at COB, 4:30 pm, and should be addressed to David McCay, Louisiana Department of Health, P.O. Box 629, Baton Rouge, LA 70802.

Public Hearing

Interested persons may submit a written request to conduct a public hearing either 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 Monday, October 10, 2022. If the criteria set forth in R.S. 49:961(B)(1) are satisfied, LDH will conduct a public hearing at 9:00 a.m. on October 25, 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 October 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

Person Preparing Statement:	<u>David L. McCay</u>	Dept.:	<u>Louisiana Department of Health</u>
Phone:	<u>(225) 342-1128; 342-1123</u>	Office:	<u>OS\Bureau of Legal Services</u>
Return Address:	<u>P.O. Box 3836 Baton Rouge, LA 70821-3836</u>	Rule Title:	<u>List of Conditions that shall deem an unborn child "Medically Futile" LAC 48, Part 1, Chapter 4, Section 101</u>
		Date Rule Takes Effect:	<u>Upon Promulgation</u>

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE

FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

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

The Louisiana Department of Health will incur \$213 SGF in expenses associated with the publication of this proposed rule change.

In accordance with Act 545 of the 2022 RLS, the following rule establishes the exclusive list of anomalies, diseases, disorders, and other conditions that shall deem an unborn child “medically futile.”

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS

The proposed rule change will not affect revenue collections for state or local governmental units.

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

The proposed rule is not anticipated to result in costs to or have economic impacts on directly affected persons, small businesses, or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT

The proposed rule will not impact competition or employment.

Signature of Agency Head or Designee

Doris Gray Brown
Assistant Secretary, Office of Public Health
Typed Name & Title of Agency Head or Designee

Legislative Fiscal Officer or Designee

Date of Signature

Date of Signature