

NOTICE OF INTENT

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

Nursing Facilities - Standards for Payment
Level of Care Determinations
(LAC 50:II.10156)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:II.10156 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 Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the standards for payment for nursing facilities to clarify level of care determinations (*Louisiana Register*, Volume 39, Number 6). The department promulgated an Emergency Rule which amended the provisions governing level of care pathways in order to clarify the provisions of the June 20, 2013 Rule (*Louisiana Register*, Volume 40, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Medical Assistance Program

Subpart 3. Standards for Payment
Chapter 101. Standards for Payment for Nursing Facilities

Subchapter G. Levels of Care

§10156. Level of Care Pathways

A. - B. ...

C. The level of care pathways elicit specific information, within a specified look-back period, regarding the individual's:

1. ...

2. receipt of assistance with activities of daily living (ADL);

C.3. - E.2.m. ...

F. Physician Involvement Pathway

F.1. - 2. ...

3. In order for an individual to be approved under the Physician Involvement Pathway, the individual must have one day of doctor visits and at least four new order changes within the last 14 days or:

a. at least two days of doctor visits and at least two new order changes within the last 14 days; and

F.3.b. - I.1.d. ...

2. In order for an individual to be approved under the behavior pathway, the individual must have:

a. exhibited any one of the following behaviors four to six days of the screening tool's seven-day look-back period, but less than daily:

i. - ii. ...

iii. physically abusive;

iv. socially inappropriate or disruptive;

or

b. exhibited any one of the following behaviors daily during the screening tool's seven-day look-back period:

i. - iii. ...

iv. socially inappropriate or disruptive;

or

c. experienced delusions or hallucinations within the screening tool's seven-day look-back period that impacted his/her ability to live independently in the community;

or

d. exhibited any one of the following behaviors during the assessment tool's three-day look-back period and behavior(s) were not easily altered:

i. wandering;

ii. verbally abusive;

iii. physically abusive;

iv. socially inappropriate or disruptive;

or

e. experienced delusions or hallucinations within the assessment tool's three-day look-back period that impacted his/her ability to live independently in the community.

J. - J.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 and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:342 (January 2011), amended LR 39:1471 (June 2013), LR 41:

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.

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

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.

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, May 28, 2015 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

Person
Preparing
Statement: Cedric Clark Dept.: Health and Hospitals
Phone: 342-2339 Office: Bureau of Health Services
Financing

Return P.O. Box 91030
Address: Baton Rouge, LA Rule Title: Nursing Facilities
Standards for Payment
Level of Care Determinations

Date Rule Takes Effect: July 20, 2014

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 summary statements, based on the attached worksheets, will be published in the Louisiana Register with the proposed agency rule.

ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL 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 14-15. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 14-15 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 revenue collections other than the federal share of the promulgation costs for FY 14-15. It is anticipated that \$270 will be collected in FY 14-15 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed Rule continues the provisions of the July 20, 2014 Emergency Rule which amended the provisions governing the nursing facility standards for payment in order to clarify the level of care pathways provisions. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to nursing facilities for FY 14-15, FY 15-16, and FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.


Signature of Agency Head
or Designee

J. Ruth Kennedy, Medicaid Director
Typed name and Title of
Agency Head or Designee


DHH/BHSF Budget Head


Legislative Fiscal Officer
or Designee 4/2/15

4-7-15
Date of Signature


Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed Rule continues the provisions of the July 20, 2014 Emergency Rule which amended the provisions governing the nursing facility standards for payment in order to clarify the level of care pathways provisions.

- B. Summarize the circumstances that require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the standards for payment for nursing facilities to clarify level of care determinations (Louisiana Register, Volume 39, Number 6). The department promulgated an Emergency Rule which amended the provisions governing level of care pathways in order to clarify the provisions of the June 20, 2013 Rule (Louisiana Register, Volume 40, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No. 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 14-15. It is anticipated that \$540 will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) If yes, attach documentation.
(b) If no, provide justification as to why this rule change should be published at this time.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COST OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase or (decrease) in cost to implement the proposed action?

COST	FY 14-15	FY 15-16	FY 16-15
PERSONAL SERVICES			
OPERATING EXPENSES	\$540	\$0	\$0
PROFESSIONAL SERVICES			
OTHER CHARGES			
REPAIR & CONSTR.			
POSITIONS (#)			
TOTAL	\$540	\$0	\$0

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

In FY 14-15, \$540 will be spent for the state's administrative expense for promulgation of this proposed rule and the final rule.

3. Sources of funding for implementing the proposed rule or rule change.

Source	FY 14-15	FY 15-16	FY 16-17
STATE GENERAL FUND	\$270	\$0	\$0
SELF-GENERATED			
FEDERAL FUND	\$270	\$0	\$0
OTHER (Specify)			
Total	\$540	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

Yes, sufficient funds are available to implement this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THIS PROPOSED ACTION.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustment in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

This proposed rule has no known impact on local governmental units.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

2. Indicate the sources of funding of the local governmental unit that will be affected by these costs or savings.

There is no known impact on the sources of local governmental unit funding.

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

- A. What increase or (decrease) in revenues can be expected from the proposed action?

REVENUE INCREASE/DECREASE	FY 14-15	FY 15-16	FY 16-17
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS	\$270	\$0	\$0
LOCAL FUNDS			
Total	\$270	\$0	\$0

**Specify the particular fund being impacted*

- B. Provide a narrative explanation of each increase or decrease in revenue shown in "A". Describe all data, assumptions, and methods used in calculating these increases or decreases.

In FY 14-15, \$270 will be collected for the federal share of the administrative expense for promulgation of this proposed rule and the final rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

- A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effects on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.)

This proposed Rule continues the provisions of the July 20, 2014 Emergency Rule which amended the provisions governing the nursing facility standards for payment in order to clarify the levels of care pathways provisions.

- B. Also, provide an estimate of any revenue impact resulting from this rule or rule change to these groups.

It is anticipated that implementation of this proposed rule will not have economic cost or benefits to nursing facilities for FY 14-15, FY 15-16, and FY 16-17.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

This rule has no known effect on competition and employment.