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**V. POTPOURRI**

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# Executive Orders

## EXECUTIVE ORDER BJ 12-08

### Flags at Half Staff

WHEREAS, Two St. John the Baptist Parish sheriff's deputies were killed in the line of duty in shootings early Thursday morning in LaPlace;

WHEREAS, Two others were injured in the shootings and are undergoing treatment;

WHEREAS, Louisiana State Police will be working in conjunction with other neighboring law enforcement agencies to fully investigate this incident and assist the community during this difficult time.

WHEREAS, Our law enforcement men and women risk their lives every day to protect our communities and our citizens;

WHEREAS, The thoughts and prayers of all Louisianians are with the families and the victims of the shootings.

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect for the four sheriff's deputies, effective immediately, the flags of the State of Louisiana shall be flown at half staff over the State Capitol and all public building and institutions of the State of Louisiana until sunset on Friday, August 17, 2012.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, August 17, 2012, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 16th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#083

## EXECUTIVE ORDER BJ 12-09

### Boards and Commissions per Diem Freeze

WHEREAS, some boards, commissions, authorities, task forces and committees have been established by law or executive order with the provision for the payment of per diem to the members thereof; and

WHEREAS, continuing to pay per diem causes a drain on the state general fund; and

WHEREAS, the termination of per diem expenditures is necessary to decrease the drain on the state general funds; and

WHEREAS, the purpose of this order is to withhold appropriations and limit expenditures for per diem for members of boards and commissions in the executive branch;

NOW, THEREFORE I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: That all expenditures for per diem to members of all boards, commissions, authorities, task forces or committees in the executive branch of government which are made by the General Appropriation Act be, and the same are hereby, terminated.

SECTION 2: The commissioner of administration is hereby empowered to withhold all appropriations for the per diem expenditures subject to this order and is directed to develop procedures to terminate all such payments.

SECTION 3: The following categories of members of boards, commissions, authorities, task forces and committees are hereby exempted from the provisions of this executive order:

1. Elected members of boards, commissions, authorities, task forces and committees who are authorized by law to receive a per diem.

2. Members of boards, commissions, authorities, task forces and committees who are statutorily authorized and entitled to the payment of per diem on their own warrant.

3. The commissioner of administration is hereby authorized to grant such further exemptions as may be necessary due to extreme economic hardships which would otherwise result to a member of a board, commission, authority, task force or committee under Section 1 and 2 of this executive order.

SECTION 4: This order shall supersede and rescind all prior executive orders not consistent herewith.

SECTION 5: This order is effective upon signature of the Governor.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on the 24th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#084

## EXECUTIVE ORDER BJ 12-10

### DOTD Guidelines for Vehicles, Trucks, and Loads

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the State of Louisiana;

WHEREAS, pursuant to Proclamation No. 92 BJ 2012, a state of emergency was declared and is currently in effect and as a result has requested the assistance of other states;

WHEREAS, the safety and welfare of the inhabitants of the affected areas of Louisiana and surrounding states, require that the movements of operators of commercial motor carriers traveling on the public highways of the State of Louisiana for the purpose of emergency preparedness and disaster relief efforts be expedited;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The following size and weight for vehicles on roadways maintained by the State of Louisiana shall not exceed the following limitations:

A. Maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than forty (40) feet, but less than fifty-one (51) feet, shall not exceed ninety thousands (90,000) pounds. No single axle vehicle shall exceed twenty thousands (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousands (48,000) pounds in weight except with a permit issued by the Louisiana Department of Transportation and Development (hereafter "Department");

B. Maximum gross vehicle weight for vehicles equipped with five (5) or more weight-bearing axles with outer bridge spans of not less than fifty-one (51) feet shall not exceed ninety-five thousands (95,000) pounds. No single axle vehicle shall exceed twenty thousand (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles vehicles shall exceed forty-eight thousand (48,000) pounds in weight, except with a permit issued by the Department;

C. Maximum gross vehicle weight for vehicles equipped with four (4) weightbearing axles with outer bridge spans of not less than forty-three (43) feet shall not exceed eighty thousand (80,000) pounds. No single axle vehicle shall exceed twenty thousand (20,000) pounds in weight. No group of two (2) axles vehicles shall exceed forty thousand (40,000) pounds in weight. No group of three (3) axles

vehicles shall exceed forty-eight thousand (48,000) pounds in weight, except with a permit issued by the Department.

D. Maximum dimensions shall not exceed fourteen (14) feet wide, fourteen (14) feet high, and ninety-five (95) feet long on Interstate highways and fourteen (14) feet wide, thirteen (13) feet six (6) inches high, and ninety-five (95) feet long on non-Interstate highways. Carriers, owners, and/or drivers of any vehicle being operated under this Order are responsible for verifying in advance that the actual dimensions and weight of the vehicle/load are acceptable for all routes being traveled. This includes, but is not limited to, areas deemed by Federal, state, or local officials as inaccessible due to damages caused by Tropical Storm Isaac, overhead structures and/or construction areas; and

E. Any vehicle greater than eight (8) feet six (6) inches wide and less than or equal to fourteen (14) feet wide may travel during daylight hours only, beginning thirty (30) minutes before sunrise and ending thirty (30) minutes after sunset.

SECTION 2: The commercial vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel for commercial motor carriers engaged in disaster relief efforts in the State of Louisiana shall be waived. This permit waiver also applies to such vehicles/loads with weights and dimensions not exceeding those described in Section 1(A) through (D) above. However, such permits must be obtained from the Louisiana Department of Transportation and Development for vehicles exceeding those weights.

SECTION 3: Nothing in this Order shall be construed to allow any vehicle to exceed weight limits posted for bridges and like structures, or relieve any vehicle or carrier, owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order, or other legal requirement not specifically waived herein.

SECTION 4: Nothing in this Order shall be construed or interpreted as being applicable to travel on non-state maintained highways, or as being applicable to construction and building projects that are not in support of Tropical Storm Isaac recovery and repair efforts.

SECTION 5: This Order is effective upon signature and shall apply unless amended, modified, rescinded, or terminated by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on the 27th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#010

**EXECUTIVE ORDER BJ 12-11**

**Declaration of Public Health Emergency and  
to Temporarily Suspend Licensure Requirements  
for Emergency Medical Technicians**

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 92 BJ 2012;

WHEREAS, Tropical Storm Isaac is currently located in the Gulf of Mexico, moving northwestward;

WHEREAS, the National Weather Service forecasts Tropical Storm Isaac to strengthen into a hurricane within the next 24 hours and has issued a hurricane watch for southeastern Louisiana;

WHEREAS, this storm poses a threat to citizens and communities across the Gulf Coast and creates conditions which place lives and property in the State in jeopardy;

WHEREAS, there is a need to immediately supplement the number of licensed Emergency Medical Technicians, including the designations of Emergency Medical Technician (EMT), Advanced EMT, Paramedic, EMT-Basic (EMT-B), EMT-Intermediate (EMT-I), and EMT-Paramedic (EMT-P), currently available to this State to respond to this emergency in order to serve those which might be affected by this emergency;

WHEREAS, Emergency Medical Technicians, including the designations of Emergency Medical Technician (EMT), Advanced EMT, Paramedic, EMT-Basic (EMT-B), EMT-Intermediate (EMT-I), and EMT-Paramedic (EMT-P), licensed in states other than Louisiana are available to provide medical aid and assistance to those persons affected by this emergency.

WHEREAS, R.S. 29:724 authorizes the Governor during a declared state of emergency to suspend the provisions of any state regulatory statute prescribing procedures for conducting state business, or the orders, rules or regulations of any State agency, if strict compliance with the provision of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

WHEREAS, the Secretary of the Department of Health and Hospitals and the State Health Officer have requested that the Louisiana statutes, laws, rules, and regulations related to licensing of Emergency Medical Technicians, including designations of Emergency Medical Technician (EMT), Advanced EMT, Paramedic, EMT-Basic (EMT-B), EMT-Intermediate (EMT-I), and EMT-Paramedic (EMT-P), be temporarily suspended for those such persons duly licensed to practice in other states who wish to provide their services in Louisiana to those persons needing medical services as a result of this emergency;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Pursuant to Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:724, et seq., and more specifically, R.S. 29:766, a state of public health emergency is hereby declared.

SECTION 2: The Louisiana statutes, laws, rules, and regulations regarding the licensure of Emergency Medical

Technicians, including designations of Emergency Medical Technician (EMT), Advanced EMT, Paramedic, EMT-Basic (EMT-B), EMT-Intermediate (EMT-I), and EMT-Paramedic (EMT-P), are hereby temporarily suspended for Emergency Medical Technicians duly licensed to practice in other states who wish to provide their services to those persons needing services as a result of this declared emergency. An individual currently licensed and in good standing as an Emergency Medical Technician, including designations of Emergency Medical Technician (EMT), Advanced EMT, Paramedic, EMT-Basic (EMT-B), EMT-Intermediate (EMT-I), and EMT-Paramedic (EMT-P), in another state may practice in Louisiana, subject to the following conditions, qualifications, and parameters:

A. The individual must be duly licensed and in good standing in another state.

B. Prior to practicing in Louisiana pursuant to this Order, the individual shall submit to the State Health Officer (or his designee) a copy of the individual's out-of-state license and photo identification. Such information may be provided by contacting the Office of Public Health, Bureau of EMS at 225-925-7200 or 225-354-3533.

C. The individual shall not exceed the applicable scope of practice applicable to his license, as provided for by applicable law of the state in which he is licensed; the individual must practice in good faith and within the reasonable scope of his/her skills, training, ability, and competency.

D. The individual must cease practicing in Louisiana upon the termination or rescission of this Order or of the declared state of emergency cited herein, or any extension thereof.

SECTION 3: This Order is effective upon signature and shall apply unless amended, modified, rescinded, or terminated by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 27th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#086

**EXECUTIVE ORDER BJ 12-12**

**Licensed Bed Capacity for Nursing Homes**

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 92 BJ 2012;

WHEREAS, Tropical Storm Isaac is currently located in the Gulf of Mexico, moving northwestward;

WHEREAS, the National Weather Service forecasts Tropical Storm Isaac to strengthen into a hurricane within the next 24 hours and has issued a hurricane warning for southeastern Louisiana;

**EXECUTIVE ORDER BJ 12-13**

**Use of State Vehicles to Transport  
Non-State Employees during Emergency**

WHEREAS, this storm poses a threat to citizens and communities across the Gulf Coast and creates conditions which place lives and property in the state in jeopardy;

WHEREAS, the State of Louisiana desires to promote and protect the health, safety, and well-being of all Louisiana residents, and specifically those residents in nursing facilities;

WHEREAS, R.S. 40:2116(D)(2) prohibits the Department of Health and Hospitals from approving additional beds in nursing facilities;

WHEREAS, the State of Louisiana desires that residents in nursing facilities be able to temporarily evacuate to safe sheltering locations during an emergency; and

WHEREAS, the State of Louisiana, recognizing the potential significance of Tropical Storm/Hurricane Isaac, desires to minimize the impact of the Tropical Storm/Hurricane on the residents of nursing facilities;

WHEREAS, R.S. 29:724 authorizes the Governor during a declared state of emergency to suspend the provisions of any State regulatory statute prescribing procedures for conducting State business, or the orders, rules or regulations of any State agency, if strict compliance with the provision of any State statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Secretary of the Department of Health and Hospitals may, at his discretion, establish such protocols, policies, and procedures as to allow a licensed nursing facility which accepts or receives evacuated residents to temporarily exceed its licensed bed capacity in the event of a declared emergency.

SECTION 2: The Secretary of the Department of Health and Hospitals may establish such protocols, policies, and procedures without strict compliance with the requirements and provisions of the Administrative Procedure Act.

SECTION 3: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 27th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#087

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency/disaster was declared through Proclamation No. 92 BJ 2012;

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the Governor emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the State; and

WHEREAS, R.S. 29:724 (D)(1), allows the Governor to suspend the provisions of any order, rule or regulation of any State agency if strict compliance with the provisions of the order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: For the purpose of (1) evacuations; (2) shelter operations; and (3) obtaining medication, personal supplies, medical care and other critical services, strict compliance with Louisiana Administrative Code Title 34, Part XI, Section 103, and any other rule, regulation, policy or practice of any agency which limits travel in state-owned vehicles to state employees unless specific permission is given and procedures are followed, shall not be required during the existence of this declared state of emergency for Hurricane Isaac, Proclamation No. 92 BJ 2012.

SECTION 2: Non-state employees may travel as passengers in state-owned vehicles only during the existence of this declared state of emergency for the specific purposes outlined above. All other travel by non-state employees in state-owned vehicles shall be in compliance with Louisiana Administrative Code Title 34, Part XI, Section 103, and any other rule, regulation, policy or practice of any agency.

SECTION 3: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 28th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#088



## EXECUTIVE ORDER BJ 12-14

### Emergency Procedures for Conducting State Business

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency/disaster was declared through Proclamation No. 92 BJ 2012; and

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the State of Louisiana;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: For procurement and contracting, strict compliance with R.S. 39:1481, et seq., and R.S. 39:1551, et seq., shall not be required. However, all State agencies should comply with the following conditions:

A. An appointed official within the agency, or the equivalent for elected officials in higher education, must determine that the failure to strictly comply with the statutory restriction is necessary due to the emergency;

B. A centralized point of contact for each agency must monitor all transactions conducted without strict statutory compliance, maintaining copies of all documentation. Documentation should specify whether the purchase falls into the "emergency" or "permanent" category and whether the purchase relates to Hurricane Isaac and all documentation must be maintained and available for audit and FEMA reimbursement purposes;

C. Written competitive quotes and/or offers must be obtained whenever possible and agencies must take the necessary steps to assess that fair and equitable pricing is being offered;

D. Performance-based contracting should be used where practical;

E. Statewide contracts should be used where practical;

F. To the maximum extent possible, such emergency contracts should be only for the duration of the emergency or to allow the agency time to comply with normal competitive bidding requirements if the goods or services will be required for an extended period of time;

G. Copies of contracts which would otherwise require approval by the Office of Contractual Review or the Office of State Purchasing and the supporting documentation discussed above must be provided to these agencies within 30 days or sooner, if practical. Additionally, ISIS agencies should enter small purchases into the AGPS/CFMS database as soon as practical. The Office of Contractual Review or the Office of State Purchasing shall review the contracts and documentation to determine compliance with this Executive Order; and

H. Payments to contractors should be made only after verification that all goods and services meet contract requirements.

SECTION 2: The Inspector General is directed and authorized to monitor those transactions conducted outside the scope of regulatory statutes, orders, rules and regulations to insure that those transactions are directly related to the emergency situation and are prudently handled and, if any inappropriate transactions are noted, those situations shall be reported directly to the Governor.

SECTION 3: All cabinet members, statewide elected officials and department heads are authorized to transfer the directions, job assignments, personnel, and functions of their departments for the purpose of performing or facilitating emergency services as necessary.

SECTION 4: All available resources of state government should be utilized as reasonably necessary to cope with this emergency.

SECTION 5: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 28th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#089

## EXECUTIVE ORDER BJ 12-15

### Hurricane Isaac Escort Requirements for Oversize Vehicles, Trucks and Loads

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state are adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the State of Louisiana;

WHEREAS, pursuant to Proclamation No. 92 BJ 2012, issued August 26, 2012, a state of emergency was declared for Hurricane Isaac and is currently in effect;

WHEREAS, the safety and welfare of the citizens of the affected areas of Louisiana require that the movements of operators of certain oversize vehicles traveling on the public highways of the State of Louisiana for the purpose of emergency services and disaster relief efforts be expedited, but still be monitored for safe movement;

NOW THEREFORE I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Permitted oversize vehicles which exceed sixteen feet in width and whose operators are unable to procure the escort services of Louisiana State Police

because of the excessive workload carried by Louisiana State Police troopers after Hurricanes Isaac may procure the services of two Louisiana state certified escorts to travel non-Interstate, state-maintained highways in lieu of the required State Police escorts. These vehicles may travel only between sunrise and sunset and must adhere to any route

requirements imposed by their DOTD-issued permits.

SECTION 2: Permitted oversize vehicles which exceed ninety feet in length, but are less than one hundred feet in length, which transport utility poles and whose operators are unable to procure the escort services of Louisiana State Police because of the excessive workload carried by State Police troopers after Hurricanes Isaac may procure the services of one Louisiana state certified escort. These vehicles may travel twenty-four hours a day in order to address disaster recovery.

SECTION 3: Nothing in this Order shall be construed to relieve any vehicle or carrier, or owner or driver of any vehicle from compliance with any restrictions other than those specified, or from any statute, rule, order, or other legal requirement not specifically waived herein.

SECTION 4: This Order is effective upon signature unless amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 28th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#090

#### EXECUTIVE ORDER BJ 12-16

Limited Transfer of Authority to Commissioner of Insurance for Emergency Rules for Hurricane Isaac

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this State will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of Louisiana;

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance Act, R.S. 29:721, et seq., a state of emergency was declared through Proclamation No. 92 BJ 2012;

WHEREAS, in accordance with R.S. 29:724, the Governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent,

hinder, or delay necessary action in coping with the emergency;

WHEREAS, families and businesses may have suffered damages due to Hurricane Isaac and its aftermath or may have to relocate temporarily due to mandatory or voluntary evacuations and/or damage to their dwellings or offices;

WHEREAS, in addition to the displacement of citizens and disruption of business operations, Hurricane Isaac may cause interruption of communications, including phone service, internet service, and delivery of mail in numerous areas throughout Louisiana;

WHEREAS, in the ordinary course of business, insurance companies send notices to their insureds, many of which are required by law to be responded to within specified time limits with consequences for failure to do so;

WHEREAS, State law also provides requirements for the approval and denial of claims by insurers, though compliance may not practical or possible;

WHEREAS, Commissioner of Insurance James J. Donelon has advised the Governor that citizens in Louisiana are at risk with regard to any and all kinds of insurance; and

WHEREAS, Commissioner of Insurance James J. Donelon has requested that the Governor authorize him to suspend laws regarding legal deadlines and certain processes and procedures applicable to Louisiana citizens who on 12:01 A.M., August 26, 2012, resided in certain parishes, regarding any and all insurance matters, including but not limited to flood insurance, homeowners insurance, life insurance, health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance, marine and transportation insurance, credit life insurance, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, disability insurance, reciprocal insurance, long term care insurance, short term health insurance, stop loss insurance, excess loss insurance, commercial general insurance, Medicare supplement insurance, preferred provider organizations, managed care organizations and any and all other insurance related entities licensed by the Commissioner or doing business in Louisiana;

NOW THEREFORE I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Commissioner of Insurance James J. Donelon shall have limited transfer of authority to act only according to the requirements for implementation of Emergency Rule 26, Title 37. The Governor's authority pursuant to R.S. 29:724 to suspend provisions of any regulatory statute prescribing the procedures for conduct of State business, or the orders, rules or regulations of the Department of Insurance is transferred to Commissioner of Insurance James J. Donelon for purposes of enacting and enforcing Emergency Rule 26, Title 37.

**EXECUTIVE ORDER BJ 12-17**

**Emergency Occupation of Hotels and  
Motels by Utility Restoration Personnel**

SECTION 2: This limited transfer of authority referenced in Section 1 specifically includes but is not limited to the authority to suspend applicable statutes, issue any rules, regulations, and directives or take any other action that Commissioner James J. Donelon deems necessary for purposes of Emergency Rule No. 26 to protect the public health, safety, and welfare of the citizens of Louisiana who were affected by Hurricane Isaac and on 12:01 AM, August 26, 2012, resided in those parishes of Louisiana specified in Emergency Rule No. 26.

SECTION 3: Any rules, regulations, directives or any other actions taken by Commissioner of Insurance James J. Donelon to effectuate Emergency Rule No. 26 shall have the full force and effect as if said rules, regulations, directives or any other actions were issued by the Governor of the State of Louisiana.

SECTION 4: The Governor of the State of Louisiana shall retain his power, coterminous with the power transferred to Commissioner of Insurance James J. Donelon, to issue any rules, regulations, directives or take any other actions with regard to any and all insurance matters necessary to protect the public health, safety and welfare of the citizens of Louisiana.

SECTION 5: This limited transfer of authority shall remain in full force and effect for the duration of Emergency Rule No. 26, which is until September 25, 2012.

SECTION 6: By reference hereto the Department of Insurance Emergency Rule No. 26 is hereby declared to be part of this Order as if set forth herein in extenso.

SECTION 7: All emergency orders, rules, regulations, directives or any other actions taken by Commissioner of Insurance James J. Donelon referenced in this Order shall be publicized according to law and posted on the Department of Insurance website at [www.lidi.state.la.us](http://www.lidi.state.la.us).

SECTION 8: All departments, commissions, boards, offices, entities, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate with the implementation of the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 29th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#091

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, L.R.S. 29:721, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, to ensure that preparations of this state will be adequate to deal with such emergencies or disasters, and to preserve the lives and property of the citizens of the State of Louisiana;

WHEREAS, under the provisions of Louisiana Homeland Security and Emergency Assistance and Disaster Act, and R.S. 29:724(A) in particular, the Governor is responsible for meeting the dangers to the state and people presented by emergencies or disasters and may issue executive orders, proclamations, and regulations which shall have the effect of law;

WHEREAS, the welfare of the citizens of the State of Louisiana is jeopardized by any disaster, natural or man-made, that interrupts the delivery of electric, gas, telecommunications, water and/or wastewater (collectively referred to herein as "utilities") services;

WHEREAS, L.R.S. 45:859 provides that the swift restoration of electric and gas utility service following natural disasters can minimize the effects of such disasters and therefore the restoration and rebuilding of the utilities is a valid public purpose and in the best interests of the citizens and businesses of this state;

WHEREAS, during the restoration and recovery of utility infrastructure, it is necessary that hotel and motel rooms and other commercial lodging facilities ("lodging facilities") be made available for employees and/or contract employees of utilities ("utility restoration personnel") many of whom travel from out of state or out of area to the affected areas;

WHEREAS, Proclamation No. 92 BJ 2012 declaring a State of Emergency for Tropical Storm Isaac was issued August 26, 2012, and made landfall August 28, 2012;

NOW THEREFORE I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: All lodging facilities make every effort to allow utility restoration personnel to occupy and/or continue to occupy such rooms or facilities under the normal terms, conditions and rates of the lodging facility.

SECTION 2: No utility restoration personnel shall be replaced by non-utility restoration personnel as long as such person currently occupying the lodging facility is able to pay the nightly rates, including applicable taxes, or is able to guarantee payment during such time as said personnel are performing restoration and recovery of utility infrastructure activities.

SECTION 3: The Attorney General, State Police, and local governmental authorities are authorized and mandated to assist in ensuring compliance with this Order while it is in effect.

SECTION 4: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 30th day of August, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#092

### EXECUTIVE ORDER BJ 12-18

#### Public Health Emergency

WHEREAS, the Louisiana Health Emergency Powers Act, R.S. 29:760, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with public health emergencies, including those caused by a disaster, such as hurricane, tornado, storm, flood, high winds, and other weather related events, that poses a high probability of a large number of deaths in the affected population or a large number of serious or long-term disabilities in the affected population in order to ensure that preparations will be adequate to deal with such emergencies or disasters and to preserve the health and lives of the people of the State of Louisiana;

WHEREAS, when the Governor after consultation with the public health authority determines that a public health emergency has occurred, or the threat thereof is imminent, R.S. 29:766(A) empowers him to declare a state of emergency by executive order or proclamation;

WHEREAS, the welfare of the citizens of the State of Louisiana is jeopardized by any disaster, natural or man-made, that creates debris on public and private property that, if not promptly removed, can contribute to unsanitary and unsafe conditions conducive to the development and spread of pests and disease;

WHEREAS, Hurricane Isaac began impacting the coastal parishes of Louisiana on Tuesday, August 28, 2012 with hurricane strength winds, wave surges, high tides, torrential rain and tornado activity before slowly moving across the entire State;

WHEREAS, The State continues to experience widespread flooding in certain areas, has issued more than 200 water boil advisories, and lost over 40% of electrical power statewide for an extended amount of time, with seven parishes still reporting electrical outages exceeding 40%;  
WHEREAS, all sixty-four parishes of Louisiana issued parish declarations of emergency with many issuing mandatory or voluntary evacuation orders, resulting in a potential disruption of health care by those relocating to an area outside their homes;

WHEREAS, a declaration of public health emergency is necessary to allow federal, state, and local governments to enter onto private property as necessary to assess and remove nuisance debris that poses a health hazard to the people of Louisiana;

WHEREAS, the Secretary of the Department of Health and Hospitals and the State Health Officer have requested that a public health emergency be declared;

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Pursuant to the Louisiana Health Emergency Powers Act, R.S. 29:760, et seq., a state of public health emergency is declared to exist in the State of Louisiana as a result of Hurricane Isaac which has created emergency conditions that threaten the lives and health of the citizens of the State.

SECTION 2: The state of public health emergency extends from Monday, September 3, 2012 through Wednesday, October 3, 2012, unless terminated sooner.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 3rd day of September, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#093

### EXECUTIVE ORDER BJ 12-19

#### In Memoriam

WHEREAS, every year, on September 11th, the people of Louisiana recognize and honor all those who lost their lives on September 11, 2001, as well as the heroic men and women who sacrificed their lives through civilian and military service in connection with related ongoing overseas combat operations;

WHEREAS, since September 11, 2001, the people of Louisiana have lost many brave men and women in these combat operations and more are currently risking their lives daily in defense of our freedom;

WHEREAS, September 11, 2011, marks the eleven year anniversary of the tragic events that occurred on September 11, 2001, and provides a special opportunity for remembering their patriotic commitment to the democratic principles of freedom and equality;

WHEREAS, these service members represent all branches of the armed forces, the Marines, Army, Air Force, Navy, Coast Guard, National Guard and Reserves;

WHEREAS, these courageous and ambitious Louisianians loved their country and the military and devoted their lives to serving their state and country;

WHEREAS, all tragically lost their lives giving their last full measure of devotion in defense of our beloved country and the freedoms that we as Americans hold dear;

WHEREAS, the memory of these dedicated men and women will live on in the hearts of their family, friends, and fellow service members forever.

NOW THEREFORE, I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect for Louisiana's fallen civilian and service members who lost their lives on September 11, 2001, and the days since to defend this country, the flags of the United States and the State of Louisiana shall be flown at half staff over the State Capitol and all public buildings and institutions of the State of Louisiana from sunrise September 11, 2012, until sunset September 11, 2012.

SECTION 2: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 10th day of September, 2012.

Bobby Jindal  
Governor

ATTEST BY  
THE GOVERNOR  
J. Thomas Schedler  
Secretary of State  
1209#094

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Structural Pest Control Commission

#### Minimum Specifications for Bait and Baiting Requirements (LAC 7:XXV.141)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:3366, the Structural Pest Control Commission declares an emergency to exist and request the adoption by emergency process the attached regulations to supersede the current permanent regulations found at LAC 7:XXV.141. The regulations being put into place by this declaration of emergency are in the process of being promulgated as permanent rules and are anticipated to become effective upon completion of promulgation. The implementation of these regulations by the emergency process is necessary in order to require pest control operators in Louisiana who install and monitor above ground bait and baiting systems for termites to monitor them at least quarterly. Some current above ground bait stations do not require a specific monitoring timeframe. Under the current regulations, there are no requirements to monitor the above ground bait stations except as required by each label. The implementation of these rules will allow pest control operators to immediately use a new above ground bait product and require them to monitor them on a specific timeframe, thereby increasing the amount of termite protections that they can offer to the public to protect homes and other structures from infestation by subterranean termites.

This Emergency Rule becomes effective on the signature of the commissioner, August 20, 2012, and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXV. Structural Pest Control

#### Chapter 1. Structural Pest Control Commission

#### §141. Minimum Specifications for Termite Control

##### Work

A. - J.3. ...

4. Above ground bait stations shall be used according to their label and labeling when the presence of subterranean termites are detected in the contracted structure and shall be monitored not less than quarterly.

J.5. - K.1. ...

2. Combination of liquid spot and bait and baiting systems treatments shall be used according to label and labeling. Above ground bait stations shall be monitored not less than quarterly.

K.3. - 8.a. ...

b. Above ground bait stations shall be monitored not less than quarterly.

K.9. - M.9....

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:235 (February 1999), LR 25:1620 (September 1999), LR 26:2437 (November 2000), LR 27:1180 (August 2001), LR 29:1063 (July 2003), LR 30:1145 (June 2004), repromulgated LR 30:1614 (August 2004), amended LR 35:207 (February 2009), LR 35:1469 (August 2009), repromulgated LR 35:1872 (September 2009), amended, LR 37:286 (January 2011), LR 38:

Mike Strain DVM  
Commissioner

1209#007

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agro-Consumer Services

#### Suspension of Rules Governing the Sale of Gasoline with Greater than 7.8 Reid Vapor Pressure (LAC 7:XXXV.303)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:4608 and 4680, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations for the suspension of rules governing the sale of gasoline with greater than 7.8 reid vapor pressure (RVP).

On August 26, 2012, Governor Bobby Jindal declared a state of emergency in Louisiana for purposes of preparing for Tropical Storm Isaac. Tropical Storm Isaac was upgraded to a hurricane on August 28, 2012. Hurricane Isaac could potentially make landfall in Louisiana on or about August 28, 2012 and create emergency conditions that threaten the lives and property of the citizens of the state. The gubernatorially declared state of emergency extends from August 26, 2012 through September 25, 2012, unless terminated sooner.

The Department of Agriculture and Forestry has adopted rules and regulations adopting the ASTM International standards for gasoline reid vapor pressure (RVP). Certain geographic areas of the state are in a non-attainment area as set out in 40 C.F.R. §80.27. These designated areas are required to sell a 7.8 psi RVP gasoline from June 1 to September 15 of each year while the remainder of the areas in the state may sell gasoline with up to 9.0 psi RVP. During the state of emergency it will be necessary to supplement the supply of gasoline in certain geographic areas that are required to have 7.8 psi RVP gasoline to ensure an adequate supply for the evacuation of persons from the path of the hurricane and for operation of emergency personnel. It is necessary to take action to minimize or prevent disruption of

Louisiana's gasoline supply in the following fourteen parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, Pointe Coupee, Lafayette, St. Mary, Orleans, St. Charles, Jefferson, St. Bernard, St. James and Lafourche. Under this temporary waiver, regulated parties should distribute and sell gasoline meeting the 7.8 psi RVP standard in the designated parishes where such supplies are available; however, in the event that emergency conditions preclude the sale or distribution of gasoline meeting this standard, gasoline with an RVP of 9.0 psi may be distributed and sold.

Gasoline with a greater than 7.8 psi RVP will have to be transported into the affected areas from other geographic areas. A temporary suspension of these rules and regulations during the emergency is necessary to provide for an adequate supply of gasoline. Failure to suspend these rules and regulations creates an imminent peril to the public health, safety, and welfare of the citizens of this state.

These emergency rules become effective upon the signature of the Commissioner and shall remain in effect until the state of emergency declared by the governor on August 26, 2012 terminates or until 11:59 p.m. on September 6, 2012, whichever date occurs first.

#### **Title 7**

### **AGRICULTURE AND ANIMALS**

#### **Part XXXV. Agro-Consumer Services**

#### **Chapter 3. Petroleum Products and Motor Fuels**

#### **§303. Standard Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends**

A. - A.8. ...

\* \* \*

9. The ASTM D 4814, "Standard Specifications for Automotive Spark-Ignition Engine Fuel" seasonal volatility standards for the sale of greater than 7.8 psi RVP gasoline in non-attainment areas of the state of Louisiana are hereby suspended until termination of the state of emergency declared by the governor on August 28, 2012 terminates or until 11:59 p.m. on September 6, 2012, whichever date occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4671, 4673, 4680, and 4681.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 31:29 (January 2005), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, LR 34:2549 (December 2008), LR 38:

This Emergency Rule becomes effective upon signature of the commissioner, August 28, 2012, and shall expire at 11:59 p.m. on September 6, 2012.

Mike Strain DVM  
Commissioner

1209#010

## **DECLARATION OF EMERGENCY**

### **Department of Agriculture and Forestry Office of Agro-Consumer Services**

Suspension of Rules Governing the Sale of Gasoline with Greater than 7.8 Reid Vapor Pressure—Amended (LAC 7:XXXV.303)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:4608 and 4680, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulations for the suspension of rules governing the sale of gasoline with greater than 7.8 psi reid vapor pressure (RVP).

On August 26, 2012, Governor Bobby Jindal declared a state of emergency in Louisiana for purposes of preparing for Tropical Storm Isaac. Tropical Storm Isaac was upgraded to a hurricane on August 28, 2012. Hurricane Isaac made landfall in Louisiana on August 29, 2012 creating widespread flooding and structural damage.

On August 28, 2012 the Department of Agriculture and Forestry issued a waiver, by way of an Emergency Rule, suspending the RVP requirements in certain areas. In spite of the prior waiver issued, there still remain problems with gasoline availability in many areas of the state, particularly the areas in and around the southeast quadrant of the state. While some amounts of low volatility gasoline remain throughout the fuel distribution system in varying quantities, the refinery shutdowns and slow pace of restarts have resulted in an inadequate supply of the overall volume of low volatility gasoline. The state faces great challenges providing an adequate supply of gasoline to support recovery efforts to those areas needing it most. Louisiana is granting a temporary emergency waiver of the RVP requirements in all parishes to allow statewide use of 11.5 psi RVP gasoline. Regulated parties should continue to sell or distribute gasoline meeting the 9.0 psi RVP and 7.8 psi RVP standards, as applicable, where such supplies are available. The intent of this emergency rule is to rescind and replace the emergency rule issued on August 28, 2012.

The Department of Agriculture and Forestry has adopted rules and regulations adopting the ASTM International standards for gasoline reid vapor pressure. A temporary suspension of these rules and regulations during the emergency is necessary to provide for an adequate supply of gasoline. Failure to suspend these rules and regulations creates an imminent peril to the public health, safety, and welfare of the citizens of this state.

This Emergency Rule becomes effective upon the signature of the commissioner, September 5, 2012, and shall remain in effect until 11:59 p.m. on September 15, 2012.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXXV. Agro-Consumer Services**

**Chapter 3. Petroleum Products and Motor Fuels**

**§303. Standard Fuel Specifications for Gasoline and Gasoline-Oxygenate Blends**

A. - A.8. ...

\* \* \*

9. The ASTM D 4814, "Standard Specifications for Automotive Spark-Ignition Engine Fuel" seasonal volatility standards for all parishes in the state of Louisiana are hereby suspended to immediately allow the statewide use of 11.5 psi RVP gasoline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4671, 4673, 4680, and 4681.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 31:29 (January 2005), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, LR 34:2549 (December 2008), LR 38:

Mike Strain, DVM  
Commissioner

1209#013

**DECLARATION OF EMERGENCY**

**Department of Children and Family Services  
Economic Stability Section**

Child Welfare Emergency Assistance Services Program  
(LAC 67:III.5597)

The Department of Children and Family Services (DCFS), Economic Stability Section, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 15, Chapter 55, TANF Initiatives to add Section 5597. This Emergency Rule shall become effective upon the signature of the DCFS secretary, September 5, 2012, and shall remain in effect for a period of 120 days.

The department considers emergency action necessary to prevent a threat to the health, safety, and welfare of TANF eligible children who have been removed from their parents by the courts and are in need of emergency assistance to cover the urgent situation.

The authorization to promulgate emergency rules to facilitate the expenditure of Temporary Assistance for Needy Families (TANF) is contained in Act 13 of the 2012 Regular Session of the Louisiana Legislature.

**Title 67**

**SOCIAL SERVICES**

**Part III. Economic Stability**

**Subpart 15. Temporary Assistance for Needy Families (TANF) Initiatives**

**Chapter 55. TANF Initiatives**

**§5597. Child Welfare Emergency Assistance Services Program**

A. The Child Welfare Emergency Assistance Services Program will provide services to children who are removed from their parents by the courts and are in foster care. These services include case management and planning as performed by DCFS' staff. The types of assistance that meet

the emergency situation may include shelter care, foster family care or emergency shelter care including food, clothing and supervision.

B. TANF eligibility is limited to children in foster care who are in the first 4 months of a single placement in a 12 month period and are recipients of Family Independence Temporary Assistance Program (FITAP) and/or Supplemental Nutrition Assistance Program (SNAP) during the first month of placement.

C. These services are TANF-eligible based on inclusion in the state's approved AFDC Emergency Assistance Program that was in effect as of August 21, 1996.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; P.L. 104-193., R.S. 46:231 and R.S. 36:474

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 38:

Suzy Sonnier  
Secretary

1209#018

**DECLARATION OF EMERGENCY**

**Student Financial Assistance Commission  
Office of Student Financial Assistance**

Scholarship/Grant Programs—TOPS Cumulative High School Grade Point Average  
(LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs [R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)].

This rulemaking amends the definition of "TOPS Cumulative High School Grade Point Average" to provide that beginning with 2013-2014 high school graduates, the grade point average will be calculated on the 19 units of courses included in the TOPS core curriculum.

This Declaration of Emergency is effective August 16, 2012, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG13142E)

**Title 28**

**EDUCATION**

**Part IV. Student Financial Assistance—Higher Education**

**Scholarship and Grant Programs**

**Chapter 3. Definitions**

**§301. Definitions**

A. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

\* \* \*

*TOPS Cumulative High School Grade Point Average—*

a. effective for high school graduates beginning with academic year (high school) 2002-2003, the grade point average calculated by LOSFA including only the grades achieved in those courses that were used to satisfy core



curriculum requirements. In the event a student has received credit for more than 16.5 hours of courses that are included in the core curriculum, the TOPS cumulative high school grade point average shall be calculated by using the course in each core curriculum category for which the student received the highest grade. For example, if a student has taken more than one Advanced Mathematics course, the cumulative grade point average shall be determined by using only the course in which the student has received the highest grade;

b. effective for high school graduates beginning with academic year (high school) 2002-2003, the grade point average for students qualifying for a performance award using a minimum ACT score of 24 and a minimum grade point average of 3.00 must include at least 10 units of honors curriculum courses (see §703.A.5.f.ii);

c. effective for high school graduates beginning with academic year (high school) 2007-2008, the grade point average shall be calculated on 17.5 hours of units of courses that are used to satisfy the core curriculum;

d. effective for high school graduates beginning with academic year (high school) 2013-2014, the grade point average shall be calculated on 19.0 hours of units of courses that are used to satisfy the core curriculum;

e. for those high schools that utilize other than a 4.00 scale, all grade values shall be converted to a 4.00 scale utilizing the following formula:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} = \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

For example, if a school awards a maximum of 5 points for honors courses, the school must use the following formula to convert an honors course grade of "C":

$$\frac{3.00}{5.00} = \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

Quality points = Credit for course multiplied by the value assigned to the letter grade.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875 (November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January

2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 35:1489 (August 2009), LR 35:1490 (August 2009), LR 36:311 (February 2010), LR 36:490 (March 2010), LR 36:2854 (December 2010), LR 37:1561 (June 2011), LR 37:1562 (June 2011), LR 38:

George Badge Eldredge  
General Counsel

1209#001

## DECLARATION OF EMERGENCY

### Office of the Governor Division of Administration Patient's Compensation Fund Oversight Board

Hurricane Isaac Emergency Provisions—Emergency  
Rule 4—Qualified Health Care Provider Services;  
Termination, Survival; Severability  
(LAC 37:III.115, 117, and 119)

Upon finding that imminent peril to the public health, safety or welfare required adoption of an emergency rule, the Patient's Compensation Fund Oversight Board (Oversight Board), under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq. (MMA), and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., adopted this Emergency Rule 4 at its meeting held on September 6, 2012.

On August 26, 2012, Governor Bobby Jindal issued Proclamation No. 92 BJ 2012 and declared the existence of a State of Emergency within the State of Louisiana caused by then Tropical Storm Isaac. This State of Emergency extended from Sunday, August 26, 2012 through Tuesday, September 25, 2012.

On August 29, 2012, at the request of Commissioner of Insurance James J. Donelon, Governor Bobby Jindal issued Executive Order No. BJ 2012-16, wherein Governor Bobby Jindal ordered, *inter alia*, (i) a limited transfer of authority to Commissioner of Insurance James J. Donelon to act only according to the requirements for implementation of Emergency Rule No. 26, Title 37; and that (ii) the limited transfer of authority shall remain in full force and effect for the duration of Emergency Rule No. 26, which became effective at 12:01 a.m. on August 26, 2012 and shall continue in full force and effect until 12:01 a.m. on September 25, 2012.

On or about September 4, 2012, Louisiana Insurance Commissioner James J. Donelon acknowledged the foregoing and issued Emergency Rule 26 suspending certain statutes and regulations regarding cancellations, non-renewals, reinstatements, premium payments, claim filings and related provisions regarding any and all insurance matters affecting insureds in Louisiana caused by Hurricane Isaac.

Hundreds of thousands of Louisiana citizens, including many qualified health care providers (QHCPs) enrolled in the Patient's Compensation Fund (Fund or PCF), have suffered damages due to Hurricane Isaac. The health care practices of many QHCPs and the homes of many patients were destroyed or were without power precluding the operation of practices, habitation and the delivery of mail. It

is believed that this disruption has affected for some time, the ability of these QHCPs to timely pay their annual renewal PCF surcharges in full and, as such, may seriously affect the provision of health care services by QHCPs to patients in Louisiana. Hurricane Isaac has created a mass disruption to the normalcy previously enjoyed by QHCPs and patients and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens, both patients and QHCPs alike.

Accordingly, Emergency Rule 4 was adopted by the Oversight Board and shall apply to all QHCPs as set forth in this Emergency Rule.

In the ordinary course of business and pursuant to LAC 37:III §517, a QHCP is allowed a "grace" period of 30 days in which to pay the annual renewal PCF surcharge in full to the insurer, the PCF or to the self-insurance trust, as applicable, to extend the PCF coverage for another year. Hurricane Isaac and its aftermath have produced a disruption in the ability of many QHCPs in these affected areas to timely pay the annual renewal PCF surcharge in full to maintain their enrollment in the Fund. This could result in a QHCP being without PCF coverage or having a gap in PCF coverage. Emergency Rule 4 was adopted to provide emergency relief to the QHCPs.

### **Title 37 INSURANCE**

#### **Part III. Patient's Compensation Fund Oversight Board Chapter 1. General Provisions**

##### **§115. Qualified Health Care Provider Services**

###### **A. Emergency Rule 4**

1. Emergency Rule 4 shall apply to all QHCPs:

a. who reside in, whose operation(s) and/or practice(s) are located in, or whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, Louisiana; and

b. who certify to the Oversight Board that said QHCP was impacted by Hurricane Isaac in a manner, including, but not limited to, evacuation, displacement, temporary relocation, or loss of power; and

c. whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after August 26, 2012 but prior to the expiration of this Emergency Rule.

2. For purposes of this Emergency Rule, QHCPs who meet all of the above criteria shall be referred to herein as "Affected QHCPs". The provisions of this Emergency Rule 4 shall not apply to any health care provider not previously enrolled in the PCF prior to August 26, 2012.

3. The Oversight Board's Rules, previously promulgated in the *Louisiana Register*, and the applicable provisions of the PCF's Rate Manual, to the extent that said regulatory provisions impose upon QHCPs a time limit to pay the applicable annual PCF renewal surcharges, shall be suspended for Affected QHCPs during the effective periods set forth in this Emergency Rule. Except as provided for in paragraph A(5) of this §115, the cancellation of PCF qualification for Affected QHCPs for failure to timely pay an annual PCF renewal surcharge is hereby suspended until September 25, 2012.

a. PCF surcharges for all Affected QHCPs whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 26,

2012 but prior to or on September 25, 2012 (suspension period), shall be due and owing on September 25, 2012. Affected QHCPs shall also furnish the required proof of financial responsibility concurrently with the payment of the appropriate surcharge. PCF surcharges for all other QHCPs shall be due, owing and payable consistent with the Oversight Board's previously promulgated rules.

4. In the event an insurer, agent or trust fund collects a renewal surcharge during the suspension period from an Affected QHCP, then the renewal surcharge shall be remitted to the PCF consistent with the MMA and the Oversight Board's applicable rules.

5. A cancellation of PCF qualification for an Affected QHCP shall not occur prior to September 25, 2012 unless upon the documented written request or written concurrence of the Affected QHCP.

6. Unless otherwise cancelled pursuant to the provisions of Paragraph 5 herein, nothing in this Emergency Rule 4 shall be construed to exempt or excuse an Affected QHCP from the obligation to pay the applicable PCF surcharge for renewal or for an extended reporting endorsement otherwise due for actual PCF qualification provided during the suspension period.

7. Emergency Rule 4 shall not relieve an affected QHCP from compliance with the MMA and the applicable Oversight Board's rules upon receiving notice of the filing of a medical review panel request (claim) against the affected QHCP.

8. The provisions of Emergency Rule 4 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum protection for the Affected QHCPs and the citizens of Louisiana.

9. Emergency Rule 4 became effective on August 26, 2012 and shall continue in full force and effect until September 25, 2012.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.44.D(3) and to be consistent with Emergency Rule No. 26 of the Department of Insurance.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 38:

##### **§117. Termination; Survival**

A. Emergency Rule 4 shall terminate at 12:01 a.m. on September 25, 2012. However, Paragraphs A.6 through A.8 of §115 shall survive the termination of this Emergency Rule 4.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.44D.(3) and to be consistent with Emergency Rule No. 26 of the Department of Insurance.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 38:

##### **§119. Severability Clause**

A. If any section or provision of Emergency Rule 4, as originally adopted and/or amended, is held invalid, such invalidity or determination shall not affect other Sections or provisions, or the application of Emergency Rule 4, as originally adopted and/or amended, to the Affected QHCPs or circumstances that can be given effect without the invalid Sections or provisions and the application to affected QHCPs or circumstances shall be severable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.44D.(3) and to be consistent with Emergency Rule No. 26 of the Department of Insurance.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Patient's Compensation Fund Oversight Board, LR 38:

Ken Schnauder  
Executive Director

1209#055

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Board of Pharmacy

#### Durable Medical Equipment (DME) Permit (LAC 46:LIII.Chapter 24)

The Louisiana Board of Pharmacy is exercising the emergency provisions of the Administrative Procedure Act, specifically at R.S. 49:953.B, to promulgate a new Rule relative to the creation of a new type of pharmacy permit specifically for providers of durable medical equipment (DME) that do not provide prescription drugs. The Emergency Rule is necessary to allow the Board of Pharmacy to issue DME permits to qualifying providers as quickly as possible.

The board has had a long-standing requirement for a pharmacy permit for any entity that wished to provide prescription drugs or devices to Louisiana citizens. The rules for the pharmacy permit contain minimum specifications for the physical plant that reflect concern for any place that stores controlled dangerous substances and other prescription drugs. Moreover, those minimum specifications require the presence of a pharmacist in the prescription department whenever the pharmacy is open for business. There are a growing number of entities that supply prescription devices or equipment but no prescription drugs. The board has determined that public safety does not require the same level of minimum specifications in business settings that do not contain prescription drugs. The board seeks to establish a separate set of rules for DME providers that do not stock or supply prescription drugs to facilitate the creation and issuance of a DME permit in lieu of the presently-required pharmacy permit.

The federal Centers for Medicare and Medicaid Services (CMS) has recently changed their eligibility criteria for DME providers intending to submit claims for services to Medicare to require evidence of compliance with state credentialing requirements.

A delay in promulgating this proposed Rule will result in some DME suppliers that do not stock prescription drugs being disqualified from participation in Medicare, which has the potential of adversely affecting their financial position. Since these suppliers provide vital services to Medicare beneficiaries across the state, the board has determined that this emergency rule is necessary to prevent imminent peril to the public health, safety, and welfare. This Declaration of Emergency was originally effective May 2, 2012. Although the Board has initiated the formal rulemaking process, the emergency rule will expire before the Board can complete the process. Therefore, the Board is re-publishing this declaration and emergency rule. It is effective August 31,

2012, and shall remain in effect for the maximum time period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever shall first occur.

## Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIII. Pharmacists

#### Chapter 24. Limited Service Providers

#### Subchapter A. Durable Medical Equipment

#### §2401. Definitions

A. As used in this chapter, the following terms shall have the meaning ascribed to them in this Section:

*Durable Medical Equipment* (DME)—technologically sophisticated medical devices that may be used in a residence, including the following:

- a. oxygen and oxygen delivery system;
- b. ventilators;
- c. respiratory disease management devices;
- b. continuous positive airway pressure (CPAP) devices;
- e. electronic and computerized wheelchairs and seating systems;
- f. apnea monitors;
- g. transcutaneous electrical nerve stimulator (TENS) units;
- h. low air loss cutaneous pressure management devices;
- i. sequential compression devices;
- g. feeding pumps;
- g. home phototherapy devices;
- h. infusion delivery devices;
- i. distribution of medical gases to end users for human consumption;
- j. hospital beds;
- k. nebulizers; and
- l. other similar equipment as determined by rule.

*Legend Device*—an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician" and/or "Rx Only", or any other designation required under federal law.

*Medical Gas*—those gases and liquid oxygen intended for human consumption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

#### §2403. Durable Medical Equipment (DME) Permit

A. No person or other entity shall sell, rent or provide, or offer to sell, rent or provide, directly or indirectly, to consumers in this state any durable medical equipment, legend devices, and/or medical gas until such person has obtained a Durable Medical Equipment (DME) permit from the board.

B. A DME permit shall authorize the permit holder to procure, possess and provide legend devices to the patient or end user; however, the DME permit shall not authorize the permit holder to procure, possess, or provide any prescription medications.

C. The board shall not issue a DME permit to any person or other entity that has not registered with the Louisiana Secretary of State to conduct business within the state.

D. Licensing Procedures

1. A person or other entity desiring to obtain a DME permit shall complete the application form supplied by the board and submit it with any required attachments and the application fee to the board.

2. The applicant shall provide a complete street address reflecting the location where the applicant will hold the equipment and engage in the activity for which the permit is acquired. The board shall not issue more than one permit for the same physical space.

3. The board shall not process applications received by facsimile, or that are incomplete, or submitted with the incorrect fee.

4. A person or other entity who knowingly or intentionally submits a false or fraudulent application shall be deemed to have violated R.S. 37:1241(A)(2).

5. Once issued, the DME permit shall expire on August 31 of every year. No person or other entity shall engage in the provision of DME with an expired DME permit.

E. Maintenance of Permit

1. A DME permit shall be valid only for the person or other entity to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary, nor shall a DME permit be valid for any premises other than the physical location for which it is issued.

2. The DME permit holder shall inform the board in writing of any and all changes to its business location within 10 calendar days, with such notice to include both the previous and new addresses.

3. A duplicate or replacement permit shall be issued upon the written request of the permit holder and payment of the required fee. A duplicate or replacement permit shall not serve or be used as an additional or second permit.

4. A DME provider changing ownership shall notify the board in writing 15 calendar days prior to the transfer of ownership.

a. A change of ownership shall be evident under the following circumstances:

- i. sale;
- ii. death of a sole proprietor;
- iii. the addition or deletion of one or more partners in a partnership;
- iv. bankruptcy sale; or
- v. a 50 percent, or more, change in ownership of a corporation, limited liability company, or association since the issuance of the original DME permit.

b. The new owner shall submit a properly completed application form with all required attachments and appropriate fee to the board.

F. Renewal and Reinstatement of Permit

1. The renewal of an active DME permit shall require the submission of a completed application form supplied by the board supplemented with any required attachments and appropriate fee, prior to the expiration date of the permit.

2. The reinstatement of an expired DME permit shall require the submission of a completed application form

supplied by the board supplemented with any required attachments as well as the renewal and reinstatement fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

**§2405. Standards of Practice**

A. The DME provider shall not furnish any legend device or medical gas to a patient without a prescription or medical order from a licensed practitioner with prescriptive authority.

B. General Requirements

1. The provider shall establish a suitable facility to house the equipment, allow for equipment maintenance work space, and contain sufficient space for the storage and retrieval of all required records.

2. The provider shall maintain the facility in a clean, orderly and sanitary condition at all times.

3. The facility shall be equipped with a functioning lavatory with hot and cold running water, or in the alternative, hand washing appliances or waterless hand cleaner are available.

4. The facility shall comply with all local and state building laws and fire codes.

5. The provider shall comply with all requirements from the United States Pharmacopeia (USP), the federal Food and Drug Administration (FDA), federal Department of Transportation (DOT) and Occupational Safety and Health Administration (OSHA) relative to the storage, packaging, labeling and shipping of DME including medical gases.

6. The provider shall staff the facility with an adequate number of qualified personnel to properly render DME services in the manner prescribed by law.

7. The provider shall make services continuously available without interruption when such services are essential to the maintenance of life or when the lack of services might reasonably cause harm.

8. The provider shall implement and maintain written procedures for handling complaints, and further, shall maintain a complaint file documenting all complaints and their resolution.

C. Requirements for Providers of Medical Gas, Oxygen and Respiratory Equipment

1. The provider shall comply with the following:

a. when transporting medical gas or oxygen in cylinder or liquid form, comply with all current dot rules;

b. when trans-filling medical oxygen systems, comply with FDA and all state agency requirements regarding trans-filling and repackaging;

c. demonstrate that medical gas and oxygen provided in cylinder or liquid form meet minimum purity standards for medical grade gas or medical grade oxygen; and

d. adhere to the following safety inspection requirements:

i. demonstrate that each piece of oxygen or respiratory equipment has been checked, is free of defects, and operates within the manufacturer's specifications;

ii. refrain from modifying equipment to the extent that the modification might reasonably cause harm;

iii. maintain all electrical components so they do not present fire or shock hazard; and

iv. ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided.

2. The provider shall comply with the following recall procedures:

a. ensure that lot numbers and expiration dates are affixed to each cylinder delivered;

b. maintain a tracking system for all medical gas and oxygen delivered;

c. document all equipment serial numbers and model numbers to ensure that equipment can be retrieved in the event a recall is initiated; and

d. maintain records for equipment that requires FDA tracking.

3. The provider shall comply with the following maintenance and cleaning requirements:

a. maintain documentation demonstrating that a function and safety check of equipment was performed prior to set-up;

b. maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;

c. maintain a material safety data sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;

d. maintain segregated areas on the premises and in delivery vehicles for clean, dirty and contaminated equipment.

e. clean and disinfect equipment according to manufacturers' specifications;

f. instruct the patient or caregiver on proper cleaning techniques as specified by the manufacturer; and

g. ensure that all medical gas, oxygen and respiratory equipment is properly identified by a tag or label as to its current status of use, i.e., out-of-order or ready for use.

4. The provider shall implement a comprehensive preventive maintenance program which shall include the following:

a. procedures for problem reporting, tracking, recall, and resolution;

b. performance of service as specified by the manufacturer and the documentation of such performance in the service records; and

c. routine inspection, service, and maintenance of equipment located in the patient's home according to the manufacturer's specifications.

5. The provider shall maintain repair logs to document repair and maintenance of equipment, and such logs shall contain the following information:

a. type of equipment;

b. manufacturer;

c. model;

d. serial number;

e. date of repair;

f. specific repair made; and

g. name of person or company performing the repair.

6. The provider shall maintain testing equipment to ensure accurate calibration. Testing equipment shall be appropriate for the level of service offered. Scales used to weigh liquid oxygen reservoirs shall be properly maintained to ensure accuracy.

7. The provider shall utilize client orientation checklists to review the following information with the patient or care giver:

a. instructions for use of the equipment;

b. safety precautions;

c. cleaning procedures;

d. maintenance procedures;

e. return demonstrations on back-up oxygen systems delivered;

f. instruction for emergency and routine contact procedures; and

g. delivery and review of written instruction materials to ensure the patient receives adequate information to properly operate the equipment.

8. A written plan of service shall be developed, implemented, and documented in the patient record. The plan of service shall include, but is not limited to, an assessment of the safety of the home environment, the ability of the patient or care giver to comply with the prescription or medical order, and the ability of the patient or care giver to operate and clean the equipment as instructed.

D. Requirements for Providers of Other Durable Medical Equipment

1. Providers who sell, rent or furnish other DME or legend devices shall comply with the following:

a. provide proper training to personnel for the safe delivery and use of any DME or legend device; and

b. ensure that all manufacturer's recommended assembly and maintenance procedures are followed; and

c. adhere to the following safety inspection measures:

i. demonstrate that each piece of DME or legend device has been checked, is free of defect and operates within the manufacturer's specifications;

ii. refrain from modifying equipment to the extent that the modification might reasonably cause harm;

iii. maintain all electrical components so they do not present fire or shock hazard; and

iv. ensure that all appropriate warning labels or labeling, including tags, are present on the equipment provided.

2. The provider shall comply with the following maintenance and cleaning requirements:

a. maintain documentation demonstrating that a function and safety check of equipment was performed prior to set-up;

b. maintain an established protocol for cleaning and disinfecting equipment which addresses both aerobic and anaerobic pathogens;

c. maintain a material safety data sheet (MSDS) on file for solutions and products used in cleaning and disinfecting procedures;

d. maintain segregated areas on the premises and in delivery vehicles for clean, dirty and contaminated equipment.

e. clean and disinfect equipment according to manufacturers' specifications; and

f. instruct the patient or caregiver on proper cleaning techniques as specified by the manufacturer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

#### **§2407. Exemptions**

A. The credentialing requirements of this Subchapter shall not apply to the following persons or entities unless such persons or entities have separate business entities engaged in the business of providing DME to patients at their home:

1. chiropractors;
2. dentists;
3. occupational therapists;
4. optometrists;
5. physical therapists;
6. physicians;
7. podiatrists;
8. respiratory therapists;
9. speech pathologists;
10. veterinarians;
11. distributors;
12. home health agencies;
13. hospice programs;
14. hospitals;
15. long term care facilities;
16. manufacturers; and
17. pharmacies.

B. Pharmacies, long term care facilities and hospitals, although excluded from the credentialing requirements of this Subchapter, shall be subject to and comply with the standards of practice identified herein.

C. Nothing in this Subchapter shall be construed to prohibit the pre-hospital emergency administration of oxygen by licensed health care providers, emergency medical technicians, first responders, fire fighters, law enforcement officers and other emergency personnel trained in the proper use of emergency oxygen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1182.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 38:

Malcolm Broussard  
Executive Director

1209#015

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Disproportionate Share Hospital Payments  
(LAC 50.V.2501, 2701, 2705 and 2707)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50.V.2501, 2701, 2705, and 2707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in

accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category, and to revise the definition of a non-rural community hospital (*Louisiana Register*; Volume 34, Number 11). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule which amended the provisions governing disproportionate share hospital payments to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs (*Louisiana Register*; Volume 35, Number 7).

Act 10 of the 2009 Regular Session of the Louisiana Legislature directed the department to amend the DSH qualifying criteria and payment methodologies for non-rural community hospitals. In compliance with Act 10, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the June 26, 2009 Emergency Rule governing supplemental DSH payments to non-rural community hospitals (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the January 20, 2010 Emergency Rule to amend the provisions governing supplemental DSH payments to non-rural community hospitals in order to redistribute the funds allocated for the state fiscal year 2010 DSH appropriation (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the June 29, 2010 Emergency Rule to revise the provisions governing DSH payments to allow for additional payments after completion of the Centers for Medicare and Medicaid Services' mandated independent audit for the state fiscal year (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective October 16, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing DSH payments.

#### **Title 50**

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

#### **Part V. Medical Assistance Program—Hospital Services**

#### **Subpart 3. Disproportionate Share Hospital Payments**

#### **Chapter 25. Disproportionate Share Hospital Payment Methodologies**

#### **§2501. General Provisions**

A. - B.3. ...

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the Department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. After completion of a Center for Medicare and Medicaid Services' (CMS) mandated independent audit for the state fiscal year, additional payments may occur subject to the conditions specified in §2701 B.1, §2705.D.2, and §2707.B. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

B.5. - E. ...

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 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:65 (January 2010), amended LR 36:512 (March 2010), LR 38:

## **Chapter 27. Qualifying Hospitals**

### **§2701. Non-Rural Community Hospitals**

A. ...

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 11 of the 2010 Regular Session of the Louisiana Legislature, and may be more or less than the federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications. Adjustments to the certification amounts shall be made in accordance with the final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. Private, non-rural community hospitals (other than freestanding psychiatric hospitals) shall be reimbursed as follows:

1. If the hospital's qualifying uninsured cost is less than 4 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 4 percent of total hospital cost, but less than 7 percent, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 7 percent of total hospital cost, but less than or equal to 10 percent, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 10 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 10 percent of total hospital cost and 80 percent of an amount equal to 5 percent of total hospital cost.

5. Qualifying uninsured cost as used for this distribution shall mean the hospital's total charges for care provided to uninsured patients multiplied by the hospital's cost-to-charge ratio as required by the CMS DHS audit rule for the applicable cost report period.

D. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from July 1, 2009 through June 30, 2010.

1. - 5. Repealed.

E. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

F. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. Any funding not distributed per the methodology outlined in Paragraphs C.1 - C.5 above shall be reallocated to these qualifying hospitals based on their reported uninsured costs. The \$10,000,000 appropriation for the non-rural community hospital pool shall be effective only for state fiscal year 2011 and distributions from the pool shall be considered nonrecurring.

G. Of the total appropriation for the non-rural community hospital pool, \$1,000,000 shall be allocated to public and private non-rural community hospitals with a distinct part psychiatric unit and \$1,000,000 shall be allocated to freestanding psychiatric hospitals.

1. To qualify for this payment hospitals must have uninsured cost as defined in §2701.C.5 equal to or greater than 4 percent of total hospital cost and:

a. be a public or private non-rural community hospital, as defined in §2701.A. that has a Medicaid enrolled distinct part psychiatric unit; or

b. enrolled in Medicaid as a freestanding psychiatric hospital that pursuant to 42 CFR 441.151 is accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

2. Payment shall be calculated by:

a. dividing each qualifying hospital's distinct part psychiatric unit's uninsured days by the sum of all qualifying psychiatric unit's uninsured days and multiplying by \$1,000,000.

b. dividing each qualifying freestanding psychiatric hospital's uninsured days by the sum of all qualifying freestanding psychiatric hospital's uninsured days and multiplying by \$1,000,000.

H. The DSH payment shall be made as an annual lump sum payment.

I. Hospitals qualifying as non-rural community hospitals in state fiscal year 2007-2008 and subsequent years may also qualify in the federally mandated statutory hospital category.

J. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§2705. Small Rural Hospitals**

A. - D.1.b. ...

2. Additional payments shall only be made after finalization of the CMS mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from small rural hospitals based on these reported audit results. If the small rural hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid shall be paid on a pro rata basis calculated using each hospital's amount underpaid divided by the sum of underpayments for all small rural hospitals.

E. ...

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 34:657 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **§2707. Public State-Operated Hospitals**

A. ...

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment shall be made in accordance with final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. - D.2.d. ...

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 34:658 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#069

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Early and Periodic Screening, Diagnosis and Treatment  
School-Based Health Centers (LAC 50:XV.9113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.9113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions to allow for Medicaid coverage and reimbursement of mental health services provided to students by School Based Health Centers and to establish provisions for other Medicaid-covered services (*Louisiana Register*, Volume 34, Number 8). School Based Health Centers were required to be enrolled as a KIDMED provider. The KIDMED program will be terminated June 1, 2012. Children who receive services in the KIDMED Program will continue to receive covered services through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The department promulgated an Emergency Rule which amended the standards of participation for School Based Health Centers to require them to be enrolled as an EPSDT Services Provider (*Louisiana Register*, Volume 38, Number 4). This Emergency Rule is being promulgated to continue the provisions of the June 1, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid eligible recipients and to assure a more efficient and effective delivery of health care services.

Effective September 30, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the standards of participation for School Based Health Centers in the Early and Periodic Screening, Diagnosis and Treatment Program.



**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XV. Services for Special Populations**

**Subpart 5. Early and Periodic Screening,  
Diagnosis, and Treatment**

**Chapter 91. School Based Health Centers**

**Subchapter B. Provider Participation**

**§9113. Standards of Participation**

A. - D. ...

E. The SBHC must be enrolled as an EPSDT services provider in addition to enrollment for providing any other services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:31.3 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 34:1419 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#070

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

**Electronic Health Records Incentive Payments  
Inclusion of Optometrists (LAC 50:I.12501)**

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.2501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The American Recovery and Reinvestment Act (ARRA) of 2009 authorized 100 percent federal financial participation to states for the purpose of establishing incentive payments to encourage Medicaid health care providers to adopt, implement, and use certified electronic health records (EHR) technology. In compliance with the directives of ARRA, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions to establish Medicaid incentive payments to qualifying professional practitioners and hospitals that adopt, implement, or upgrade certified EHR technology (*Louisiana Register*, Volume 36, Number 12).

The department now proposes to amend the provisions governing the EHR Incentive Payments Program to include optometrists as eligible professionals who may qualify to receive incentive payments. This action is being taken to

secure new and enhanced federal funding, and to expand provider participation in the EHR Incentive Payment Program. It is anticipated that the implementation of this Emergency Rule will be cost neutral to the Medicaid Program for fiscal year 2012-2013 as incentive payments to qualifying optometrists shall be 100 percent federally funded.

Effective October 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Electronic Health Records Incentive Payment Program.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part I. Administration**

**Subpart 13. Electronic Health Records**

**Chapter 125. Incentive Payments**

**§12501. General Provisions**

A. ...

B. The following providers may qualify to receive Medicaid incentive payments:

1. - 5. ...

6. optometrists;

7. acute care hospitals, including cancer and critical access hospitals; and

8. children's specialty hospitals.

C. - D. ...

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 36:2865 (December 2010), amended LR 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#066

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing  
and**

**Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers  
Children's Choice—Money Follows the Person  
Rebalancing Demonstration Extension  
(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S.

36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9).

The allocation of opportunities for the Money Follows the Person Rebalancing Demonstration Program was scheduled to end September 30, 2011. Section 2403 of the Affordable Care Act of 2010 authorized an extension of the Money Follows the Person Rebalancing Demonstration Program until September 30, 2016. The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver in order to allow allocation of waiver opportunities until September 30, 2016 (*Louisiana Register*, Volume 37, Number 9). This Emergency Rule is being promulgated to continue the provisions of the September 28, 2011 Emergency Rule. This action is being taken to secure enhanced federal funding.

Effective September 27, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

#### **Title 50**

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

## **Part XXI. Home and Community-Based Services Waivers**

### **Subpart 9. Children's Choice**

#### **Chapter 111. General Provisions§11107. Allocation of Waiver Opportunities**

A. – B. ...

1. The MFP Rebalancing Demonstration will stop allocation of opportunities on September 30, 2016.

a. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed before September 30, 2016, the opportunity will be returned to the MFP Rebalancing Demonstration pool and an offer will be made based upon the approved program guidelines.

b. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed after September 30, 2016, the opportunity will cease to exist.

C. - C.7. ...

**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 for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 38:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#071

## **DECLARATION OF EMERGENCY**

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

Home and Community-Based Services Waivers  
Community Choices Waiver  
(LAC 50:XXI.8105, Chapter 83, 8501, 8701,  
8901-8903, 9301, and Chapter 95)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.8105, Chapter 83, §8501, §8701, §§8901-8903, §9301, and Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopted provisions which established the Community Choices Waiver Program to replace the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule that amended the December 20, 2011 Rule to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a court-mandated standard for use in the determination of expedited Community Choices Waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 38, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2012 Emergency Rule. This action is being taken to promote the health and welfare of waiver participants and to ensure that these services are rendered in a more cost-effective manner.

Effective October 19, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the

Office of Aging and Adult Services amend the provisions governing the Community Choices Waiver Program.

#### **Title 50**

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

## **Part XXI. Home and Community-Based Services**

### **Waivers**

#### **Subpart 7. Community Choices Waiver**

### **Chapter 81. General Provisions**

#### **§8105. Programmatic Allocation of Waiver**

##### **Opportunities**

A. – D. ...

E. Notwithstanding the priority group provisions, up to 300 Community Choices Waiver opportunities may be granted to qualified individuals who require expedited waiver services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an expedited waiver opportunity, the individual must, at the time of the request for the expedited opportunity, be approved for the maximum amount of services allowable under the Long Term Personal Care Services Program and require institutional placement, unless offered an expedited waiver opportunity.

2. The following criteria shall be considered in determining whether or not to grant an expedited waiver opportunity:

a. – b. ...

c. the support from an informal caregiver is not available due to a family crisis;

d. the person lives alone and has no access to informal support; or

e. for other reasons, the person lacks access to adequate informal support to prevent nursing facility placement.

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 37:3517 (December 2011), amended LR 38:

### **Chapter 83. Covered Services**

#### **§8301. Support Coordination**

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

1. intake;
2. assessment;
3. plan of care development and revision;
4. linkage to direct services and other resources;
5. coordination of multiple services among multiple providers;
6. monitoring and follow-up;
7. reassessment;
8. evaluation and re-evaluation of level of care and need for waiver services;
9. ongoing assessment and mitigation of health, behavioral and personal safety risk;
10. responding to participant crisis;
11. critical incident management; and
12. transition/discharge and closure.

B. Support coordinators shall provide information and assistance to waiver participants in directing and managing their services.

1. When participants choose to self-direct their waiver services, the support coordinators are responsible for informing participants about:

a. their responsibilities as an employer;

b. how their activities as an employer are coordinated with the fiscal agent and support coordinator; and

c. their responsibility to comply with all applicable state and federal laws, Rules, policies, and procedures.

2. Support coordinators shall be available to participants for on-going support and assistance in these decision-making areas and with employer responsibilities.

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 37:3519 (December 2011), amended LR 38:

#### **§8305. Environmental Accessibility Adaptations**

A. - A.1....

a. Once identified by MDS-HC, a credentialed assessor must verify the need for, and draft specifications for, the environmental accessibility adaptation(s).

b. ...

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 37:3519 (December 2011), amended LR 38:

#### **§8307. Personal Assistance Services**

A. - A.3....

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable laws governing the delegation of medical tasks/medication administration;

5. supervision or assistance while escorting/accompanying the participant outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the POC and to provide the same supervision or assistance as would be rendered in the home; and

A.6. - C....

D. Community Choices Waiver participants cannot receive Long-Term Personal Care Services.

E. - E.4. ...

5. "a.m. and p.m." PAS cannot be "shared" and may not be provided on the same calendar day as other PAS delivery methods.

6. It is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day. However, "a.m." or "p.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

7. PAS providers must be able to provide both regular and "a.m." and "p.m." PAS and cannot refuse to accept a Community Choices Waiver participant solely due to the type of PAS delivery method that is listed on the POC.

F. ...

G. A home health agency direct service worker who renders PAS must be a qualified home health aide as

specified in Louisiana's Minimum Licensing Standards for Home Health Agencies.

H. - I. ...

J. The following individuals are prohibited from being reimbursed for providing PAS services to a participant:

J.1. - K. ...

L. It is permissible for the PAS allotment to be used flexibly in accordance with the participant's preferences and personal schedule and OAAS' documentation 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 and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3519 (December 2011), amended LR 38:

### **§8311. Adult Day Health Care Services**

A. - B. ...

1. meals, which shall not constitute a "full nutritional regimen" (three meals per day) but shall include a minimum of two snacks and a hot nutritious lunch;

2. transportation between the participant's place of residence and the ADHC in accordance with licensing standards;

B.3. - C. ...

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 37:3521 (December 2011), amended LR 38:

### **§8313. Caregiver Temporary Support Services**

A. ...

B. Federal financial participation is not claimed for the cost of room and board except when provided as part of caregiver temporary support services furnished in a facility approved by the state that is not a private residence.

C. - E. ...

F. When Caregiver temporary support is provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Caregiver temporary support services may be utilized no more than 30 calendar days or 29 overnight stays per plan of care year for no more than 14 consecutive calendar days or 13 consecutive overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

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 and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 38:

### **§8315. Assistive Devices and Medical Supplies**

A. Assistive devices and medical supplies are specialized medical equipment and supplies which include devices, controls, appliances, or nutritional supplements specified in the POC that enable participants to:

A.1. - 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 and the Office of Aging and Adult Services, LR 37:3521 (December 2011), amended LR 38:

### **§8321. Nursing Services**

A. Nursing services are services that are medically necessary and may only be provided efficiently and effectively by a nurse practitioner, registered nurse, or a licensed practical nurse working under the supervision of a registered nurse. These nursing services must be provided within the scope of the Louisiana statutes governing the practice of nursing.

B. - F. ...

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 37:3522 (December 2011), amended LR 38:3522 (December 2011), amended LR 38:

### **§8323. Skilled Maintenance Therapy**

A. - F.3.i. ...

4. Respiratory therapy services which provide preventative and maintenance of airway-related techniques and procedures including:

F.4.a. - 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 and the Office of Aging and Adult Services, LR 37:3522 (December 2011), amended LR 38:

## **Chapter 85. Self-Direction Initiative**

### **§8501. Self-Direction Service Option**

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. - C.2.d.ii. ...

iii. fails to provide required documentation of expenditures and related items;

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures and related items; or

v. violates Medicaid Program Rules or guidelines of the self-direction option.

D. Employee Qualifications. All employers under the self-direction option must:

1. be at least 18 years of age on the date of hire; and

2. complete all training mandated by OAAS within the specified timelines.

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 37:3523 (December 2011), amended LR 38:

## **Chapter 87. Plan of Care**

### **§8701. Plan of Care**

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC shall include services covered under the Community Choices Waiver in addition to services

covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The POC shall be developed using a person-centered process coordinated by the support coordinator.

B. - C.1. ...

2. individual cost of each waiver service; and
3. the total cost of waiver services covered by the POC.

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 37:3524 (December 2011), amended LR 38:

## **Chapter 89. Admission and Discharge Criteria**

### **§8901. Admission Criteria**

A. - A.5. ...

B. Failure of the individual to cooperate in the eligibility determination or plan of care development processes or to meet any of the criteria above shall result in denial of admission to the Community Choices Waiver.

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 37:3524 (December 2011), amended LR 38:

### **§8903. Admission Denial or Discharge Criteria**

A. - A.6. ...

7. The individual fails to cooperate in the eligibility determination or plan of care development processes or in the performance of the POC.

A.8. - A.9. ...

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 37:3524 (December 2011), amended LR 38:

## **Chapter 93. Provider Responsibilities**

### **§9301. General Provisions**

A. ...

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the Community Choices Waiver Program provisions and the services have been prior authorized and actually provided.

C. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide services and supports have failed and there is no option but to refuse services.

C.1. - D. ...

E. Any provider of services under the Community Choices Waiver shall not interfere with the eligibility,

assessment, care plan development, or care plan monitoring processes including, but not limited to:

1. harassment;
2. intimidation; or
3. threats against program participants or members of their informal support network, of DHH, or support coordination staff.

F. Any provider of services under the Community Choices Waiver shall have the capacity and resources to provide all aspects of any service they are enrolled to provide in the specified service area.

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 37:3524 (December 2011), amended LR 38:

## **Chapter 95. Reimbursement**

### **§9501. Reimbursement Methodology**

A. - A.1.c. ...

2. in-home caregiver temporary support service when provided by a personal care services or home health agency;

3. caregiver temporary support services when provided by an adult day health care center; and

4. adult day health care services.

B. - G. ...

H. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's approval of the POC.

I. ...

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 37:3525 (December 2011), amended LR 38:

### **§9503. Direct Support Professionals Minimum Wage**

A. The minimum hourly rate paid to direct support professionals shall be at least the current federal minimum wage.

A.1. - B. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:3525 (December 2011), amended LR 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#072

**DECLARATION OF EMERGENCY**

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

Home and Community-Based Services Waivers  
Community Choices Waiver—Reimbursement Rate  
Reduction (LAC 50:XXI.9501)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XXI.9501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by House Bill 1 of the 2012 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law.” This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopted provisions which established the Community Choices Waiver Program to replace the Elderly and Disabled Adults (EDA) Waiver (*Louisiana Register*, Volume 37, Number 12). The department promulgated an Emergency Rule which amended the December 20, 2011 Rule to clarify provisions governing the delivery of services, to remove the wage pass-through language that was erroneously included in the Rule, and to comply with a court-mandated standard for use in the determination of expedited Community Choices Waiver slots and addition of waiver opportunities (*Louisiana Register*, Volume 38, Number 2).

As a result of a budgetary shortfall in state fiscal year 2013, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Community Choices Waiver to reduce the reimbursement rates (*Louisiana Register*, Volume 38, Number 7). The department now proposes to amend the provisions of the July 1, 2012 Emergency Rule in order to reduce the reimbursement rates for certain services that were inadvertently omitted from the July 1, 2012 rate reduction. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions of the July 1, 2012 Emergency Rule governing the reimbursement methodology for the Community Choices Waiver.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE  
Part XXI. Home and Community-Based Services  
Waivers**

**Subpart 7. Community Choices Waiver**

**Chapter 95. Reimbursement**

**§9501. Reimbursement Methodology**

A. - H. ...

I. Effective for dates of service on or after July 1, 2012, the reimbursement rates for Community Choices Waiver personal assistance services furnished to one participant shall be reduced by 1.5 percent of the rates in effect on June 30, 2012.

J. Effective for dates of service on or after October 1, 2012, the reimbursement rates for in-home caregiver temporary support services provided by personal care attendants or a home health agency shall be reduced by 1.5 percent of the rates in effect on September 30, 2012.

K. Effective for dates of service on or after October 1, 2012, the reimbursement rates for caregiver temporary support services provided by an adult day health care center shall be reduced by 1.5 percent of the rates in effect on September 30, 2012.

L. Effective for dates of service on or after October 1, 2012, the reimbursement rates for adult day health care services shall be reduced by 1.5 percent of the rates in effect on September 30, 2012.

1. The provider-specific transportation component shall be excluded from this rate reduction.

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 37:3525 (December 2011), amended LR 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#067

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Inpatient Hospital Services—Small Rural Hospitals  
Low Income and Needy Care Collaboration  
(LAC 50:V.1125)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 in the

Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient acute care services and psychiatric services (*Louisiana Register*, Volume 35, Number 5). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to provide for a supplemental Medicaid payment to small rural hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 37, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 20, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective October 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by small rural hospitals.

#### **Title 50**

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

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

#### **Subpart 1. Inpatient Hospital Services**

#### **Chapter 11. Rural, Non-State Hospitals**

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

#### **§1125. Small Rural Hospitals**

A. – D. ...

E. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments shall be issued to qualifying non-state acute care hospitals for inpatient services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement.

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Quarterly payment distribution shall be limited to one-fourth of the lesser of:

a. the difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for covered inpatient services provided to Medicaid recipients. Medicaid billed charges and payments will be based on a 12 consecutive month period for claims data selected by the department; or

b. for hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program, the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period.

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 35:955 (May 2009), amended LR 38:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#073

### **DECLARATION OF EMERGENCY**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Outpatient Hospital Services  
Diabetes Self-Management Training  
(LAC 50:V.Chapter 63)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 63 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life.

In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Hospital Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services rendered in an outpatient hospital setting (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid

costs associated with the care of recipients diagnosed with diabetes-related illnesses. This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to ultimately reduce the Medicaid costs associated with their care. Effective October 16, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Hospital Program to provide coverage for diabetes self-management training services rendered in an outpatient hospital setting.

#### **Title 50**

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

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

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

### **Chapter 63. Diabetes Education Services**

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

#### **§6301. Introduction**

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

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 38:

#### **§6303. Scope of Services**

A. DSMT services shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period following the initial order. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management every 12 months.

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 38:

#### **§6305. Provider Participation**

A. In order to receive Medicaid reimbursement, outpatient hospitals must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
  - a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or
  - b. have recent didactic and experiential preparation in education and diabetes management.
2. At a minimum, the instructional team must consist of one the following professionals who is a CDE:
  - a. a registered dietician;
  - b. a registered nurse; or
  - c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled outpatient hospital that will submit the claims for reimbursement of outpatient DSMT services rendered by the team.

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 38:

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

#### **§6311. Reimbursement Methodology**

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals in an outpatient hospital setting.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

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 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#074

### **DECLARATION OF EMERGENCY**

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

Personal Care Services—Long-Term  
Policy Clarifications and Service Limit Reduction  
(LAC 50:XV.12901-12909 and 12911-12915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:XV.12901-12909 and §§12911-12915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Senate Resolution 180 and House Resolution 190 of the 2008 Regular Session of the Louisiana Legislature directed the department to develop and implement cost control



mechanisms to provide the most cost-effective means of financing the Long-Term Personal Care Services (LT-PCS) Program. In compliance with these legislative directives, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amended the provisions governing the LT-PCS Program to: 1) implement uniform needs-based assessments for authorizing service units; 2) reduce the limit on LT-PCS service hours; 3) mandate that providers must show cause for refusing to serve clients; and 4) incorporate provisions governing an allocation of weekly service hours (*Louisiana Register*, Volume 35, Number 11).

The department promulgated an Emergency Rule which amended the provisions governing long-term personal care services to: 1) establish provisions that address requests for services; 2) revise the eligibility criteria for LT-PCS; 3) clarify the provisions governing restrictions for paid direct care staff and the place of service; and 4) reduce the maximum allowed service hours (*Louisiana Register*, Volume 36, Number 8). The department promulgated an Emergency Rule which amended the provisions of the September 5, 2010 Emergency Rule to clarify the provisions of the Rule (*Louisiana Register*, Volume 36, Number 12). The department promulgated an Emergency Rule which amended the provisions of the December 20, 2010 Emergency Rule to further clarify the provisions of the Rule (*Louisiana Register*, Volume 37, Number 4). The department promulgated an Emergency Rule which amended the provisions of the April 20, 2011 Emergency Rule to bring these provisions in line with current licensing standards (*Louisiana Register*, Volume 37, Number 11). The department promulgated an Emergency Rule which amended the November 20, 2011 Emergency Rule to clarify the provisions governing the staffing requirements for LT-PCS (*Louisiana Register*, Volume 38, Number 1). The January 20, 2012 Emergency Rule was published with an error in the effective date and repromulgated with an editor's note in the February 2012 *Louisiana Register* (*Louisiana Register*, Volume 38, Number 2). The department promulgated an Emergency Rule which amended the January 20, 2012 Emergency Rule to clarify provisions governing the place of service delivery (*Louisiana Register*, Volume 38, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 20, 2012 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 19, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend the provisions governing long-term personal care services.

#### **Title 50**

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

#### **Part XV. Services for Special Populations**

##### **Subpart 9. Personal Care Services**

#### **Chapter 129. Long Term Care**

##### **§12901. General Provisions**

A. The purpose of personal care services is to assist individuals with functional impairments with their daily living activities. Personal care services must be provided in accordance with an approved service plan and supporting documentation. In addition, personal care services must be coordinated with the other Medicaid and non-Medicaid

services being provided to the recipient and will be considered in conjunction with those other services.

B. Each recipient requesting or receiving long-term personal care services (LT-PCS) shall undergo a functional eligibility screening utilizing an eligibility screening tool called the level of care eligibility tool (LOCET), or a subsequent eligibility tool designated by the Office of Aging and Adult Services (OAAS).

C. Each LT-PCS applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC) or a subsequent assessment tool designated by OAAS. The MDS-HC is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score which measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment.

1. The late-loss ADLs are eating, toileting, transferring and bed mobility. An individual's assessment will generate a score which is representative of the individual's degree of self-performance on these four late-loss ADLs.

2. - 7. Repealed.

D. Based on the applicant/recipient's uniform assessment score, he/she is assigned to a level of support category and is eligible for a set allocation of weekly service hours associated with that level.

1. If the applicant/recipient disagrees with his/her allocation of weekly service hours, the applicant/recipient or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may qualify for more hours if it can be demonstrated that:

a. one or more answers to the questions involving late-loss ADLs are incorrect as recorded on the assessment; or

b. he/she needs additional hours to avoid entering into a nursing facility.

E. Requests for personal care services shall be accepted from the following individuals:

1. a Medicaid recipient who wants to receive personal care services;

2. an individual who is legally responsible for a recipient who may be in need of personal care services; or

3. a responsible representative designated by the recipient to act on his/her behalf in requesting personal care services.

F. Each recipient who requests PCS has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the recipient to act on his/her behalf in the process of accessing and/or maintaining personal care services.

1. The appropriate form authorized by OAAS shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not give legal authority for that individual to independently handle the recipient's business without his/her involvement.

b. The written designation is valid until revoked by the recipient. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the recipient in the assessment, care plan development and service delivery processes; and

b. to aid the recipient in obtaining all necessary documentation for these processes.

3. - 4. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 38:

### §12902. Participant Direction Option

A. The Office of Aging and Adult Services implements a pilot program, the Louisiana Personal Options Program (La POP), which will allow recipients who receive long term personal care services (LT-PCS) to have the option of utilizing an alternative method to receive and manage their services. Recipients may direct and manage their own services by electing to participate in La POP, rather than accessing their services through a traditional personal care agency.

1. La POP shall be implemented through a phase-in process in Department of Health and Hospitals administrative regions designated by OAAS.

A.2. - B.1. ...

2. With the assistance of a services consultant, participants develop a personal support plan based on their approved plan of care and choose the individuals they wish to hire to provide the services.

C. - E.1. ...

2. Change in Condition. The participant's ability to direct his/her own care diminishes to a point where he/she can no longer do so and there is no responsible representative available to direct the care.

3. Misuse of Monthly Allocation of Funds. The LA POP participant or his/her responsible representative uses the monthly budgeted funds to purchase items unrelated to personal care needs or otherwise misappropriate the funds.

4. Failure to Provide Required Documentation. The participant or his/her responsible representative fails to complete and submit employee time sheets in a timely and accurate manner, or provide required documentation of expenditures and related items as prescribed in the Louisiana Personal Options Program's Roles and Responsibility agreement.

5. ...

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 Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

### §12903. Covered Services

A. *Personal Care Services*—those services that provide assistance with the distinct tasks associated with the performance of the activities of daily living (ADLs) and the instrumental activities of daily living (IADLs). Assistance may be either the actual performance of the personal care task for the individual or supervision and prompting so the individual performs the task by him/herself. ADLs are those personal, functional activities required by the recipient. ADLs include tasks such as:

1. - 5. ...

6. ambulation;

7. toileting; and

8. bed mobility.

B. IADLs are those activities that are considered essential, but may not require performance on a daily basis. IADLs cannot be performed in the recipient's home when he/she is absent from the home. IADLs include tasks such as:

1. light housekeeping;

2. food preparation and storage;

3. shopping;

4. laundry;

5. assisting with scheduling medical appointments when necessary;

6. accompanying the recipient to medical appointments when necessary;

7. assisting the recipient to access transportation;

8. reminding the recipient to take his/her medication as prescribed by the physician; and

9. medically non-complex tasks where the direct service worker has received the proper training pursuant to R.S. 37:1031-1034.

C. Emergency and nonemergency medical transportation is a covered Medicaid service and is available to all recipients. Non-medical transportation is not a required component of personal care services. However, providers may choose to furnish transportation for recipients during the course of providing personal care services. If transportation is furnished, the provider agency must accept any liability for their employee transporting a recipient. It is the responsibility of the provider agency to ensure that the employee has a current, valid driver's license and automobile liability insurance.

1. La POP participants may choose to use some of their monthly budget to purchase non-medical transportation.

a. If transportation is furnished, the participant must accept all liability for their employee transporting them. It is the responsibility of the participant to ensure that the employee has a current, valid driver's license and automobile liability insurance.

D. ...

E. La POP participants may choose to use their services budgets to pay for items that increase their independence or substitute for their dependence on human assistance. Such items must be purchased in accordance with the policies and procedures established by OAAS.

F. Personal care services may be provided by one worker for up to three long-term personal care service recipients who live together and who have a common direct service provider.

G. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2578 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

**§12905. Eligibility Criteria**

A. ...

B. Recipients must meet the eligibility criteria established by OAAS or its designee. Personal care services are medically necessary if the recipient:

1. meets the medical standards for admission to a nursing facility and requires limited assistance with at least one or more activities of daily living;

B.2. - D. ...

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 29:912 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

**§12907. Recipient Rights and Responsibilities**

A. - A.2. ...

3. training the individual personal care worker in the specific skills necessary to maintain the recipient's independent functioning while maintaining him/her in the home;

4. developing an emergency component in the plan of care that includes a list of personal care staff who can serve as back-up when unforeseen circumstances prevent the regularly scheduled worker from providing services;

5. - 9. ...

B. Changing Providers. Recipients may request to change PCS agencies without cause once after each three month interval during the service authorization period. Recipients may request to change PCS providers with good cause at any time during the service authorization period. Good cause is defined as the failure of the provider to furnish services in compliance with the plan of care. Good cause shall be determined by OAAS or its designee.

C. In addition to these rights, a La POP participant has certain responsibilities, including:

1. ...

2. notifying the services consultant at the earliest reasonable time of admission to a hospital, nursing facility, rehabilitation facility or any other institution;

2.a. - 8. ...

9. training the direct service worker in the specific skills necessary to maintain the participant's independent functioning to remain in the home;

10. - 13. ...

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 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

**§12909. Standards for Participation**

A. - A.1.c. ...

d. any federal or state laws, Rules, regulations, policies and procedures contained in the Medicaid provider manual for personal care services, or other document issued by the department. Failure to do may result in sanctions.

2. ...

B. In addition, a Medicaid enrolled agency must:

1. maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department or its designee; and

2. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

3. - 12.c. Repealed.

C. An LT-PCS provider shall not refuse to serve any individual who chooses his agency unless there is documentation to support an inability to meet the individual's needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

C.1. - D.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, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), LR 38:

**§12910. La POP Standards for Participation**

A. Direct service workers employed under LA POP must meet the same requirements as those hired by a PCS agency.

B. All workers must be employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations.

B.1. - C. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

**§12911. Staffing Requirements**

A. All staff providing direct care to the recipient, whether they are employed by a PCS agency or a recipient participating in La POP, must meet the qualifications for furnishing personal care services per the licensing regulations. The direct service worker shall demonstrate empathy toward the elderly and persons with disabilities, an ability to provide care to these recipients, and the maturity and ability to deal effectively with the demands of the job.

B. - B.3. Repealed.

C. Restrictions

1. The following individuals are prohibited from being reimbursed for providing services to a recipient:

- a. the recipient’s spouse;
- b. the recipient’s curator;
- c. the recipient’s tutor;
- d. the recipient’s legal guardian;
- e. the recipient’s designated responsible representative; or

f. the person to whom the recipient has given Representative and Mandate authority (also known as Power of Attorney).

D. - E.1.b. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

**§12912. Training**

A. Training costs for direct service workers employed by La POP participants shall be paid out of the La POP participant’s personal supports plan budget.

B. - H. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2580 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

**§12913. Service Delivery**

A. Personal care services shall be provided in the recipient’s home or in another location outside of the recipient’s home if the provision of these services allows the recipient to participate in normal life activities pertaining to the IADLs cited in the plan of care. The recipient’s home is defined as the place where he/she resides such as a house, an apartment, a boarding house, or the house or apartment of a family member or unpaid primary care-giver. IADLs cannot be performed in the recipient’s home when the recipient is absent from the home.

1. - 4. Repealed.

B. The provision of services outside of the recipient’s home does not include trips outside of the borders of the state without written prior approval of OAAS or its designee, through the plan of care or otherwise.

C. Participants are not permitted to receive LT-PCS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

1. - 3. Repealed.

D. - E. ...

F. It is permissible for an LT-PCS recipient to use his/her approved LT-PCS weekly allotment flexibly provided that it is done so in accordance with the recipient’s preferences and personal schedule and is properly documented in accordance with OAAS policy.

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 29:913 (June 2003), amended LR 30:2833 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Financing and the Office of Aging and Adult Services, LR 38:

**§12915. Service Limitations**

A. Personal care services shall be limited to up to 32 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient’s plan of care and supporting documentation.

B. There shall be no duplication of services.

1. Personal care services may not be provided while the recipient is admitted to or attending a program which provides in-home assistance with IADLs or ADLs or while the recipient is admitted to or attending a program or setting where such assistance is available to the recipient.

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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), LR 38:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#075

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Pharmacy Benefits Management Program  
Methods of Payment (LAC 50:XXIX.105 and Chapter 9)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.105 and Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for prescription drugs to Medicaid eligible recipients enrolled in the Medicaid Program. Act 10 of the 2009 Regular Session of the Louisiana Legislature provided that the department may redefine the reimbursement

methodology for multiple source drugs in establishing the state maximum allowable cost (MAC) in order to control expenditures to the level of appropriations for the Medicaid Program. In accordance with the provisions of Act 10, the department promulgated an Emergency Rule to redefine the Louisiana maximum allowable cost (LMAC) (*Louisiana Register*, Volume 36, Number 1). In addition, the dispensing fee was increased for drugs with an LMAC.

The department subsequently determined that it was necessary to repeal the January 1, 2010 Emergency Rule in its entirety and amend the provisions governing the methods of payment for prescription drugs to redefine the LMAC (*Louisiana Register*, Volume 36, Number 2). The department promulgated an Emergency Rule to amend the February 1, 2010 Emergency Rule to revise the provisions governing the methods of payment for prescription drugs to further redefine the LMAC and increase the dispensing fee (*Louisiana Register*, Volume 36, Number 3). The department determined that it was necessary to repeal the March 1, 2010 Emergency Rule in its entirety and promulgated an Emergency Rule to amend the provisions governing the methods of payment for prescription drugs to revise the LMAC provisions (*Louisiana Register*, Volume 36, Number 3).

The department has now determined that it is necessary to repeal the March 20, 2010 Emergency Rule in its entirety in order to revise the provisions governing the methods of payment for prescription drugs and the dispensing fee. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$14,333,228 for state fiscal year 2012-2013.

Effective September 5, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the methods of payment for prescription drugs covered under the Pharmacy Benefits Management Program.

## **Title 50**

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

#### **Part XXIX. Pharmacy**

##### **Chapter 1. General Provisions**

##### **§105. Medicaid Pharmacy Benefits Management System Point of Sale—Prospective Drug Utilization Program**

A. - B. ...

C. Formulary Management. The formulary is managed through the use of federal upper limits (FUL). Federal upper limits provide for dispensing of multiple source drugs at established limitations unless the prescribing physician specifies that the brand product is medically necessary for a patient. Establishment of co-payments also provides for formulary management. The Medicaid Program has established a broad formulary with limited exceptions.

D. Reimbursement Management. The cost of pharmaceutical care is managed through estimated acquisition cost (EAC) of drug ingredient costs through average acquisition cost (AAC) or through wholesale acquisition cost (WAC) when no AAC is assigned; and compliance with federal upper limits regulations, and the establishment of the dispensing fee, drug rebates, and copayments.

E. - H. ...

I. POS/PRO-DUR Requirements Provider Participation

1. - 5. ...

6. Pharmacy providers and physicians may obtain assistance with clinical questions from the University of Louisiana at Monroe, School of Pharmacy.

L7. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153, Title XIX of the Social Security Act, and the 1995-96 General Appropriate Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1053 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

#### **Chapter 9. Methods of Payment**

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

##### **§901. Definitions**

*Average Acquisition Cost (AAC)*—the average of net payments that pharmacists made to purchase a drug product, after taking into account such items as purchasing allowances, discounts, and rebates as determined through the collection and review of pharmacy invoices and other information deemed necessary by the Medicaid Program, and in accordance with applicable state and Federal law.

*Average Wholesale Price*—Repealed.

\* \* \*

*Dispensing Fee*—the fee paid by the Medicaid Program to reimburse for the professional services provided by a pharmacist when dispensing a prescription, including the provider fee assessed for each prescription filled in the state of Louisiana or shipped into the state of Louisiana per legislative mandate.

\* \* \*

*Single Source Drug*—a drug mandated or sold by one manufacturer or labeler.

*Usual and Customary Charge*—a pharmacy's charge to the general public that reflects all advertised savings, discounts, special promotions, or other programs, including membership-based discounts initiated to reduce prices for product costs available to the general public, a special population, or an inclusive category of customers.

*Wholesale Acquisition Cost (WAC)*—the manufacturer's published catalog price for a drug product to wholesalers as reported to Medicaid by one or more national compendia on a weekly basis.

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 32:1061 (June 2006), amended LR 34:87 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), LR 38:

##### **Subchapter B. Dispensing Fee**

##### **§915. General Provisions**

A. The dispensing fee shall be set by the department and reviewed periodically for reasonableness and, when deemed appropriate by the Medicaid Program, may be adjusted considering such factors as fee studies or surveys.

*Adjustment Factors*—Repealed.

a. - d. Repealed.

*Base Rate*—Repealed.

*Base Rate Components*—Repealed.

Table. Repealed.

a. - d. Repealed.

*Maximum Allowable Overhead Cost*—Repealed.

*Overhead Year*—Repealed.

B. Provider participation in the Louisiana Dispensing Fee Survey shall be mandatory. Failure to cooperate in the Louisiana Dispensing Fee Survey by a provider shall result in removal from participation as a provider of pharmacy services in the Medicaid Program. Any provider removed from participation shall not be allowed to re-enroll until a dispensing fee survey document is properly completed and submitted to the bureau.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1558 (July 2010), amended LR 38:

#### **§917. Maximum Allowable Overhead Cost Calculation**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1559 (July 2010), repealed LR 38:

#### **§919. Parameters and Limitations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed LR 38:

#### **§921. Interim Adjustment to Overhead Cost**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed LR 38:

#### **§923. Cost Survey**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1560 (July 2010), repealed LR 38:

#### **§925. Dispensing Fee**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 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 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), repealed LR 38:

#### **Subchapter C. Estimated Acquisition Cost**

##### **§935. Estimated Acquisition Cost Formula**

A. *Estimated Acquisition Cost (EAC)* is the average acquisition cost of the drug dispensed. If there is not an AAC available, the EAC is equal to the wholesale acquisition cost, as reported in the drug pricing compendia utilized by the department's fiscal intermediary.

B. - B.4.c. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended LR 38:

#### **Subchapter D. Maximum Allowable Costs**

##### **§945. Reimbursement Methodology**

A. Maximum Pharmaceutical Price Schedule

1. ...

2. Repealed.

B. Payment will be made for medications in accordance with the payment procedures for any eligible person who has identified himself to the provider by presenting his identification card which shows his eligibility. The department advises participating pharmacists regarding payable medication.

C. - F. ...

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 32:1064 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended LR 38:

##### **§949. Cost Limits**

A. - A.3.c. ...

B. The department shall make payments for single source drugs based on the lower of:

1. estimated acquisition cost (EAC) plus the dispensing fee; or

2. the provider's usual and customary charges to the general public not to exceed the department's "Maximum Pharmaceutical Price Schedule." *General public* is defined here as all other non-Medicaid prescriptions including:

- a. third party insurance;
- b. pharmacy benefit management; or
- c. cash.

3. Repealed.

C. The department shall make payments for multiple source drugs other than drugs subject to "physician certifications" based on the lower of:

1. estimated Acquisition Cost plus the dispensing fee;

2. federal Upper Limits plus the dispensing fee; or

3. the provider's usual and customary charges to the general public not to exceed the department's "Maximum Pharmaceutical Price Schedule." *General public* is defined here as all other non-Medicaid prescriptions including:

- a. third party insurance;
- b. pharmacy benefit management; or
- c. cash.

4. Repealed.

D. - E.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, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), amended LR 38:

**Subchapter E. 340B Program**  
**§961. Definitions**

\* \* \*

*Estimated Acquisition Cost (EAC)*—the average acquisition cost of the drug dispensed. If there is not an AAC available, the EAC is equal to the wholesale acquisition cost, as reported in the drug pricing compendia utilized by the department's fiscal intermediary.

\* \* \*

*Wholesale Acquisition Cost (WAC)*—the manufacturer's published catalog price for a drug product to wholesalers as reported to Medicaid by one or more national compendia on a weekly basis.

\* \* \*

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 32:1066 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

**§963. Reimbursement**

A. - B. ...

C. Dispensing Fees. The covered entity shall be paid a dispensing fee of \$10.13 for each prescription dispensed to a Medicaid patient. With respect to contract pharmacy arrangements in which the contract pharmacy also serves as the covered entity's billing agent, the contract pharmacy shall be paid the \$10.13 dispensing fee on behalf of the covered entity.

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 32:1066 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1561 (July 2010), LR 38:

**Subchapter F. Antihemophilia Drugs**

**§971. Reimbursement**

A. Anti-hemophilia drugs purchased by a covered entity through the 340B Program and dispensed to Medicaid recipients shall be billed to Medicaid at actual acquisition cost plus 10 percent and the dispensing fee unless the covered entity has implemented the Medicaid carve-out option. If the covered entity has implemented the Medicaid carve-out option, such drugs shall be reimbursed at EAC plus the dispensing fee or the billed charges, whichever is less.

B. Anti-hemophilia drugs purchased by a non-340B covered entity shall be reimbursed at EAC plus the dispensing fee.

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 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#005

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals**  
**Bureau of Health Services Financing**

Professional Services Program  
Diabetes Self-Management Training  
(LAC 50:IX.Chapter 7 and 15103)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.Chapter 7 and §15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life. In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services (*Louisiana Register*, Volume 37, Number 2). It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated with the care of recipients diagnosed with diabetes-related illnesses.

The department promulgated an Emergency Rule which amended the provisions of the February 20, 2011 Emergency Rule governing the Professional Services Program in order to clarify the provider participation requirements for the provision of DSMT services (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to reduce the Medicaid costs associated with their care.

Effective October 16, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing diabetes self-management training services rendered in the Professional Services Program.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part IX. Professional Services Program**

**Subpart 1. General Provisions**

**Chapter 7. Diabetes Education Services**

**§701. General Provisions**

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

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 38:

**§703. Scope of Services**

A. DSMT shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period beginning with the initial training. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management per calendar year.

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 38:

**§705. Provider Participation**

A. In order to receive Medicaid reimbursement, professional services providers must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:  
a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or

b. have recent didactic and experiential preparation in education and diabetes management.

2. At a minimum, the instructional team must consist of one the following professionals who are also a CDE:

- a. a registered dietician;
- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled professional services provider that will submit the claims for reimbursement of DSMT services rendered by the team.

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 38:

**Subpart 15. Reimbursement**

**Chapter 151. Reimbursement Methodology**

**Subchapter A. General Provisions**

**§15103. Diabetes Education Services**

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

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 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#076

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Professional Services Program—Physician Services  
Reclassification of Optometry Services  
(LAC 50:IX.15111 and 15113)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the February 1982, January 1987, February 1987, and April 1987 Rules governing optometry services, and amends LAC 50:IX.15111 and §15113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid reimbursement for optometry services as an optional covered service under the Medicaid State Plan. Optometrists are classified in the Medicaid State Plan as other licensed



practitioners and their services are not considered mandatory physician services.

The American Recovery and Reinvestment Act (ARRA) of 2009 authorized 100 percent federal financial participation to states for the purpose of establishing incentive payments to encourage Medicaid health care providers to adopt, implement, and use certified electronic health records (EHR) technology. The Act does not provide for incentive payments to optometrist unless the services rendered by these practitioners are classified as mandatory physician services under the Medicaid State Plan.

Since the department already provides Medicaid reimbursement to participating optometrist to the same extent as physicians who perform the same eye care services, the decision has been made to amend the provisions governing physician services in the Professional Services Program in order to reclassify optometry services as a mandatory physician service under the Medicaid State Plan. This reclassification will allow optometrists to qualify for EHR incentive payments. The department also repeals the February 1982, January 1987, February 1987, and April 1987 Rules governing optometry services, and revises and repromulgates the June 1985 Rule in a codified format for inclusion in the *Louisiana Administrative Code*.

This action is being taken to secure new and enhanced federal funding, and to expand provider participation in the EHR Incentive Payment Program. It is anticipated that the implementation of this Emergency Rule will be cost neutral to the Medicaid Program for fiscal year 2012-2013 as incentive payments to qualifying optometrists shall be 100 percent federally funded.

Effective October 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing physician services covered in the Professional Services Program.

#### **Title 50**

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

#### **Part IX. Professional Services Program**

##### **Subpart 15. Reimbursement**

#### **Chapter 151. Reimbursement Methodology**

##### **Subchapter B. Physician Services**

#### **§15113. General Provisions**

A. The reimbursement rates for physician services shall be a flat fee for each covered service as specified on the established Medicaid fee schedule. The reimbursement rates shall be based on a percentage of the Louisiana Medicare Region 99 allowable for a specified year.

##### **B. Optometry Services**

1. Effective October 1, 2012, eye care services rendered by a participating optometrist, within their scope of optometric practice, shall be classified and reimbursed under the Medicaid State Plan as a mandatory physician service to the same extent, and according to the same standards as physicians who perform the same eye care services.

2. Recipients in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program are excluded from optometry service limits.

3. The Medicaid Program shall not provide reimbursement for eyeglasses provided to Medicaid recipients 21 years of age or older.

**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 38:

#### **§15115. Reimbursement**

A. Effective for dates of service on or after October 15, 2007, the reimbursement for selected physician services shall be 90 percent of the 2007 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated.

1. The reimbursement shall remain the same for those services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2007 Louisiana Medicare Region 99 allowable.

2. For those services that are currently reimbursed at a rate above 120 percent of the 2007 Louisiana Medicare Region 99 allowable, effective for dates of service on or after October 15, 2007, the reimbursement for these services shall be reduced to 120 percent of the 2007 Louisiana Medicare Region 99 allowable.

B. Effective for dates of service on or after January 1, 2008, the reimbursement for selected physician services shall be 90 percent of the 2008 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount, unless otherwise stipulated.

1. The reimbursement shall remain the same for those services that are currently being reimbursed at a rate that is between 90 percent and 120 percent of the 2008 Louisiana Medicare Region 99 allowable.

2. For those services that are currently reimbursed at a rate above 120 percent of the 2008 Louisiana Medicare Region 99 allowable, effective for dates of service on or after January 1, 2008, the reimbursement for these services shall be reduced to 120 percent of the 2008 Louisiana Medicare Region 99 allowable.

C. Effective for dates of service on or after August 4, 2009, the reimbursement for all physician services rendered to recipients 16 years of age or older shall be reduced to 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. For those services that are currently reimbursed at a rate below 80 percent of the Louisiana Medicare Region 99 allowable, effective for dates of service on or after August 4, 2009, the reimbursement for these services shall be increased to 80 percent of the Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

2. The following physician services are excluded from the rate adjustment:

- a. preventive medicine evaluation and management;
- b. immunizations;
- c. family planning services; and
- d. select orthopedic reparative services.

3. Effective for dates of service on or after November 20, 2009, the following physician services are excluded from the rate adjustment:

- a. prenatal evaluation and management; and
- b. delivery services.

D. Effective for dates of service on or after January 22, 2010, physician services rendered to recipients 16 years of age or older shall be reduced to 75 percent of the 2009

Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. The following physician services rendered to recipients 16 years of age or older shall be reimbursed at 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount:

- a. prenatal evaluation and management services;
- b. preventive medicine evaluation and management services; and
- c. obstetrical delivery services.

E. Effective for dates of service on or after January 22, 2010, all physician services rendered to recipients under the age of 16 shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

F. Effective for dates of service on or after January 22, 2010, all physician-administered drugs shall be reimbursed at 90 percent of the 2009 Louisiana Medicare Average Sales Price (ASP) allowable or billed charges, whichever is the lesser amount.

G. Effective for dates of service on or after January 22, 2010, all physician services that are currently reimbursed below the reimbursement rates in §15113.E-G shall be increased to the rates in §15113.E-G.

H. Effective for dates of service on or after December 1, 2010, reimbursement shall be 90 percent of the 2009 Louisiana Medicare Region 99 allowable for the following obstetric services when rendered to recipients 16 years of age and older:

1. vaginal-only delivery (with or without postpartum care);
2. vaginal delivery after previous cesarean (VBAC) delivery; and
3. cesarean delivery following attempted vaginal delivery after previous cesarean delivery. The reimbursement for a cesarean delivery remains at 80 percent of the 2009 Louisiana Medicare Region 99 allowable when the service is rendered to recipients 16 years of age and older.

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 36:1252 (June 2010), amended LR 36:2282 (October 2010), amended LR 37:904 (March 2011), LR 38:

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.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Bruce D. Greenstein  
Secretary

1209#068

## DECLARATION OF EMERGENCY

**Department of Health and Hospitals  
Office of the Secretary  
and  
Department of Children and Family Services  
Office of the Secretary**

Community and Family Support System  
Flexible Family Fund (LAC 48:I.Chapter 161)

The Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary §16103, §16105, §16107, §16109, §16111, §16113 and §16115 of Part I concerning the Community and Family Support System Flexible Family Fund as authorized by R.S. 28:821 and as directed by House Bill 1 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 378 of the 1989 Regular Session of the Louisiana Legislature and Act 1011 of the 1991 Regular Session of the Louisiana Legislature created and continued the Community and Family Support System (R.S. 28:821 et seq.). The original Rule was promulgated to implement the cash subsidy program to provide a cash stipend to families of eligible children with severe and profound disabilities to offset the cost of keeping their children at home. The Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary amended the provisions governing the Community and Family Support System Flexible Family Fund by introducing a universal screening protocol for all children with identified qualifying exceptionalities for severity of functional limitations and changed terminology for qualifying exceptionalities to reflect current usage. The Rule also changed the name of the program from cash subsidy to flexible family fund. (*Louisiana Register*, Volume 37, Number 9).

As a result of a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals has determined that it is necessary to amend the provisions governing the eligibility determination for the flexible family fund to enact financial eligibility criteria for children receiving a home and community-based services waiver. This action is being taken to avoid a budget deficit. It is estimated that implementation of this Emergency Rule will reduce expenditures in the flexible family fund by approximately \$127,008 for state fiscal year 2013.

Effective October 1, 2012, the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary amends the provisions governing the eligibility determination for the flexible family fund to enact financial eligibility criteria for children receiving a home and community-based services waiver.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 11. Community and Family Support System**

**Chapter 161. Community and Family Support System—Flexible Family Fund**

**§16103. Definitions**

\* \* \*

*Family*—the basic family unit consists of one or more adults and children, if any, related by blood, marriage, adoption, and residence in the same household.

*Family Income*—money or its equivalent in exchange for labor or services, from the sale of goods or property, or as profit from financial investments, benefits, entitlement, and any income that is not from working or from whatever source of gross income, which means all income from whatever source derived including (but not be limited to) the following:

1. interest;
2. rents;
3. royalties;
4. dividends;
5. alimony and separate maintenance payments;
6. annuities;
7. income from life insurance and endowment contracts;
8. pensions; and
9. income from an interest in an estate or trust.

\* \* \*

*Proof of Family Income*—documentation of income, which for the flexible family fund, is a copy of the most recent tax return and all schedule attachments for each family member.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

**§16105. Application Process**

A. - B. ...

C. For the application to be complete, the documentation listed in §16103 of this rule, which identifies a qualifying exceptionality and proof of family income for families whose children receive a home and community-based services waiver, must accompany the application for the flexible family fund, and the application must be signed by the responsible care giver and received by the appropriate agency through the mail.

D. Applications for the flexible family fund shall be screened at the point of initial application to determine whether the child has a qualifying exceptionality, to determine financial eligibility for families whose children

receive waiver services, to determine that the child is appropriately served by the agency and to ensure that applications are routed to the appropriate agency. When family income exceeds 650 percent of the federal poverty level and the child is a home and community-based services waiver recipient, the child will be ineligible for participation in the flexible family fund.

E. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

**§16107. Determining Children Eligible for the Flexible Family Fund**

A. - F. ...

G. Children who receive a home and community-based services waiver and whose family income is at or less than 650 percent of the federal poverty level are eligible to participate in the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

**§16109. Children Ineligible for the Flexible Family Fund**

A. - A.2. ...

3. children in residence at the Louisiana School for the Deaf and the Louisiana School for the Visually Impaired; and

4. children receiving a home and community-based services waiver and whose family income exceeds 650 percent of the federal poverty level.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

**§16111. Eligibility Determination**

A. - D. ...

E. There shall be financial eligibility criteria for the flexible family fund for recipients of a home and community-based services waiver.

1. DHH will determine if recipients of a home and community-based services waiver meet the financial eligibility requirements for the flexible family fund.

2. Recipients of a home and community-based services waiver whose family income exceeds 650 percent of the federal poverty level will be excluded from the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR

18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

**§16113. Payment Guidelines**

A. - C. ...

D. The family of recipients of a home and community-based services waiver is required to report to OCDD accurate and current family income. If a flexible family fund recipient becomes certified for a home and community-based services waiver, the family is required to report this change in status to OCDD and submit proof of family income. Documentation must be received by OCDD within 30 days of the change in income or home and community-based services waiver recipient status.

E. If it is discovered that the family of the recipient of a home and community-based services waiver sent in inaccurate family income eligibility documentation or that the family did not update OCDD with changes in income, and the recipient no longer meets the financial eligibility requirements as defined in §16111 of this rule, OCDD may follow-up with recoupment of funds paid during the period of ineligibility. If it is discovered that family of the flexible family fund recipient did not update OCDD of certification of home and community-based services and the recipient did not meet the family financial eligibility requirements §16111 of this rule, OCDD may follow-up with recoupment of funds paid during the period of ineligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

**§16115. Terminations**

A. - A.6. ...

7. failure to comply with the provisions of the individual agreement or the flexible family fund, including the requirement to maintain quarterly contact with the agency administering the flexible family fund and the requirement to provide required documentation, including proof of income for families of children receiving a home and community-based services waiver;

8. child's exceptionality or degree of severity no longer meets eligibility criteria;

9. child attains age 18 years;

10. responsible care giver fails to maintain the child in an approved educational program; or

11. income for the family of the child receiving a home and community-based services waiver exceeds 650 percent of the federal poverty level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), LR 38:

Interested persons may submit written comments to Laura Brackin, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this

Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at OCDD state office and regional offices and Human Services Authorities and Districts.

Bruce D. Greenstein  
Secretary

1209#058

**DECLARATION OF EMERGENCY**

**Department of Insurance  
Office of the Commissioner**

Emergency Rule 26—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Isaac  
(LAC 37:XI.Chapter 47)

Emergency Rule 26 is issued to address concerns resulting from Hurricane Isaac which made landfall in Louisiana on August 28, 2012. Emergency Rule 26 is issued pursuant to the plenary authority of the Commissioner of Insurance for the State of Louisiana, including, but not limited to, the following: Proclamation No. 92 BJ 2012 issued on August 26, 2012, by Governor Bobby Jindal declaring a State of Emergency extending from August 26, 2012, through September 25, 2012, unless terminated sooner; the Federal Emergency Management Agency's Notice of a Major Disaster Declaration FEMA-3347-EM and FEMA-4080-DR; Executive Order No. BJ 2012-16 issued on August 29, 2012, by Governor Bobby Jindal transferring authority over any and all insurance matters to Commissioner of Insurance James J. Donelon (commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:11; R.S. 49:950 et seq.

On August 26, 2012, Governor Bobby Jindal declared a State of Emergency within the state of Louisiana in response to the expected landfall of Tropical Storm Isaac which subsequently became Hurricane Isaac. As a result of the hurricane's landfall, Hurricane Isaac caused extensive power outages and flooding that destroyed many homes and impacted the livelihood of the citizens of Louisiana. This State of Emergency extends from August 26, 2012, through September 25, 2012, unless terminated sooner.

Since the issuance of Proclamation No. 92 BJ 2012, hundreds of thousands of Louisiana citizens have suffered damage due to Hurricane Isaac. In some places it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed, precluding habitation. The damage caused by Hurricane Isaac has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, the temporary displacement of persons from their homes, loss of personal belongings and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance related matters. Hurricane Isaac has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced

an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The commissioner will be hindered in the proper performance of his duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of insurance subject to the Louisiana Insurance Code.

Accordingly, Emergency Rule 26 is issued and shall apply to all insurers, health maintenance organizations (HMOs), health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner, including any entity enumerated in Emergency Rule 26, regarding any and all types of insurance, including, but not limited to, flood insurance (not issued pursuant to the NFIP), homeowners insurance, life insurance, group and individual health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance (not issued pursuant to a USDA program), marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, reciprocal insurance and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana. Emergency Rule 26 is applicable to insureds as defined in §4701 and shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

In the ordinary course of business, insurers, HMOs, group and individual health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner send notices to insureds, many of which are required to do so by statute, giving the insured certain limited periods of time within which to pay premiums or otherwise respond. Hurricane Isaac and its aftermath have produced a disruption in the notification process because of the inability of insureds to receive mail due to mandatory and/or voluntary evacuations and/or the destruction or damage of their homes. Thus, many insureds are currently unable to timely act or respond to such notices or to timely pay insurance premiums and need additional time within which to act or respond.

Some insurers, HMOs, group and individual health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner may attempt to cancel, nonrenew or not reinstate such insurance policies. Additionally, some insureds with policies in force as of 12:01 a.m. on August 26, 2012, who wish to make timely payment are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or

potentially uninsured. Emergency Rule 26 provides emergency relief to the insureds of Louisiana impacted by Hurricane Isaac and its aftermath so that they will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on August 26, 2012.

#### **Title 37**

#### **INSURANCE**

#### **Part XI. Rules**

#### **Chapter 47. Emergency Rule 26—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Isaac**

#### **§4701. Benefits, Entitlements, and Protections**

A. The benefits, entitlements and protections of Emergency Rule 26 shall be applicable to insureds who, as of 12:01 a.m. on August 26, 2012, had a policy, insurance contract or certificate of coverage for any of the types of insurance enumerated in §4703 and reside in the state of Louisiana. Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4703. Applicability**

A. Emergency Rule 26 shall apply to every insurer, health insurance issuer, HMO, PPO, MCO, PBM or TPA acting on behalf of an insurer, health insurance issuer, health maintenance organization, preferred provider organization or managed care organization with regard to any and all types of insurance, including, but not limited to, flood insurance (not issued pursuant to the NFIP), homeowners insurance, life insurance, health insurance, group and individual health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance (not issued pursuant to a USDA program), marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, disability insurance, reciprocal insurance, long term care insurance, short term health insurance, stop loss insurance, excess loss insurance, Medicare supplement insurance, Medicare select insurance, preferred provider organizations (PPOs), health maintenance organizations (HMOs), managed care organizations (MCOs), and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4705. Suspension of Statutory or Regulatory Provisions**

A. Any statutory or regulatory provision, or any policy provision contained in any policy of insurance set forth in §4703 shall be suspended to the extent that said statutory or regulatory provision, or policy provision, imposed upon an insured a time limit to perform any act or transmit information or funds with respect to any insurance enumerated in §4703, which act or transmittal was to have been performed on or after 12:01 a.m. on August 26, 2012. The time limit for any such performance, act or transmittal shall be suspended until 12:01 a.m. September 25, 2012, or thereafter.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4707. Suspension of Notice of Cancellation, Notice of Nonrenewal, Nonreinstatement**

A. Emergency Rule 26 hereby suspends any notice of cancellation, notice of nonrenewal, nonreinstatement or any other notice related to any of the types of insurance enumerated in §4703 that was in force and effect as of 12:01 a.m. on August 26, 2012. Accordingly, any such notices that had not resulted in the actual cancellation, nonrenewal or nonreinstatement of the types of insurance enumerated in §4703 prior to 12:01 a.m. on August 26, 2012, shall be null and void. Furthermore, any such notice shall be reissued de novo to the insured in accordance with existing statutory requirements and any such notice shall not be issued to the insured until 12:01 a.m. September 25, 2012, or thereafter.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4709. Suspension of Louisiana Insurance Code Provisions**

A. Any and all provisions in the Louisiana Insurance Code relative to providing for a premium finance company to act on behalf of and/or as agent for an insurance company are hereby suspended. In furtherance thereof, the right, entitlement, legal provision or any other form of legal authority, including any policy provision, of any and all insurers to send a notice of cancellation is suspended effective 12:01 a.m. on August 26, 2012, and shall remain suspended until 12:01 a.m. September 25, 2012. The right of any insurer to utilize the services of a premium finance company to issue any such notice is suspended during the pendency of Emergency Rule 26.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4711. Suspension of Cancellation, Nonrenewal or Nonreinstatement**

A. Except as provided for in §4747, the cancellation, nonrenewal or nonreinstatement of any and all insurance enumerated in §4703 that had not become effective before 12:01 a.m. on August 26, 2012, is hereby suspended and shall be deferred until 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4713. Act of God; Cancellation and Nonrenewal for Homeowners Insurance**

A. As set forth is R.S. 22:1336, no policy shall be cancelled or nonrenewed because of a claim resulting from Hurricane Isaac or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4715. Suspension of Statutory or Regulatory Provisions**

A. All health insurance issuers, HMO's, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner with insureds in the state of Louisiana shall waive any and all restrictions relative to out-of-network access to all covered health care services. To avoid delays in accessing care, all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall waive requirements for medical certifications or pre-certifications, referrals, medical necessity reviews and notification of hospital admissions. The right of all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner to conduct retrospective medical necessity reviews and retrospectively deny any and all claims is hereby suspended for non-elective health care services. Additionally, the right of all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner to recoup or offset with regard to any and all claims for non-elective health care services is hereby suspended. Non-elective health care services are those that are urgent, or necessary in order to not place the health of the insured at risk and are not provided in an emergency department of a hospital.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4717. Non-Elective Health Care Services**

A. In the event health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner pend a non-elective health care services claim(s), as allowed pursuant to Emergency Rule 26, and is subsequently entitled to cancel or terminate a policy for non-payment of a premium or rescission pursuant to R.S. 22:1068.B(2) and R.S. 22:1074B.(2), health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall pay those non-elective claims to the health care professionals at the following rate or allowance.

1. For contracted health care providers or health care professionals, 50 percent of the contracted reimbursement rate.
2. For non-contracted health care providers or health care professionals, 50 percent of the non-participating rate or allowance.
3. With regard to claims submitted pursuant to §4717, when the underlying policy is cancelled or terminated for

non-payment of premium or rescission pursuant to R.S. 22:1068.B.(2) and R.S. 22:1074B.(2), health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are, urgent or necessary in order to not place the health of the insured at risk and are not provided in an emergency department of a hospital.

4. With regard to any and all non-elective claims paid by health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner pursuant to the requirements of §4717, the provisions of R.S. 22:1838 or R.S. 22:1859 are hereby suspended and recoupment is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4719. Emergency Health Care Services**

A. R.S. 22:1821 et seq., remains in effect regarding all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner, and any and all other health insurance regulated by the Louisiana Insurance Code. Emergency services claims shall be covered as if in-network and health care professionals and health care providers shall be reimbursed in accordance with the Patient Protection and Affordable Care Act specifically, section 2719A and 75 FR 37188 and health care professionals and health care providers shall be prohibited from balance billing the insured, policyholder, member, subscriber, enrollee and certificate holder.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4721. Compliance with Health Care Consumer Billing and Protection Act**

A. All health care professionals and health care providers rendering services to an insured in the state of Louisiana shall comply with the Health Care Consumer Billing and Protection Act pursuant to R.S. 22:1871, et seq. Health care providers and/or health care professionals who file a claim and/or accept payment for non-elective health care services and emergency health care services shall have legally released the insureds from any further financial obligation for the health care services rendered. Health care providers and/or health care professionals shall be deemed to have released, discharged and waived any and all rights to take any legal action or redress, either in person or via transfer, assignment or subrogation, to collect any unpaid amounts from insureds and/or health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner. Any violation by health care providers and/or health care professionals of this provision may be deemed an unfair trade practice under R.S. 22:1871 et seq. and may be referred to the Louisiana Attorney General. The Louisiana Attorney General may pursue remedies as provided for in R.S. 51:1401 et seq.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4723. Assuring Portability—Compliance**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:1061, et seq., titled Assuring Portability, Availability and Renewability of Health Insurance Coverage, and any applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4725. Assuring Portability—Suspension**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:1061, et seq., titled Assuring Portability, Availability and Renewability of Health Insurance Coverage and applicable federal law, except for the time periods enumerated in §4725 shall be suspended during the pendency of Emergency Rule 26. All such notices required in §4725 must be reissued de novo on or after 12:01 a.m. on September 25, 2012.

B. The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage.

C. The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage for loss of employer contributions) to be eligible for special enrollment in accordance with the Patient Protection and Affordable Care Act or applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4727. Suspension of Cancellation, Nonrenewal, and Nonreinstatement Provisions**

A. All cancellation, termination, nonrenewal and nonreinstatement provisions in Title 22, including, but not limited to, R.S. 22:1068, 22:1074, 22:978, 22: 977 and 22:272 are hereby suspended.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4729. Denying, Pending or Rejecting a Claim**

A. The commissioner hereby suspends the right of denying, pending or rejecting a claim from any pharmacists or pharmacy for a thirty (30) day supply of prescription medications, regardless of the date of the last refill. In furtherance of this suspension, health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner shall pay all such claims for reimbursement submitted by a pharmacist or pharmacy.

1. The commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a thirty (30) day supply.

2. The commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on

replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

3. All health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4731. Cancellation or Termination of Policy for Non-Payment**

A. Health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner may pend a claim(s), as required pursuant Emergency Rule 26, and may subsequently cancel or terminate a policy only for non-payment of premium in accordance with the procedure set forth in Emergency Rule 26 or for rescission in accordance with R.S. 1068 B.(2) and R.S. 1074B. (2).

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4733. Discount Billing**

A. Those amounts representing coinsurance, copayments, deductibles, noncovered health care services or other amounts identified by the health insurance issuer, HMO, PPO, MCO, PBMs or TPA or any or all other health insurance entity doing business in Louisiana or regulated by the commissioner on an explanation of benefits as the amount for which the insured is liable shall not be considered discount billing or dual billing pursuant R.S. 22:1871 et seq., and remains the obligation of the insured or as provided for pursuant to the Patient Protection and Affordable Care Act or other applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4735. Payment of Medicare Supplement Premiums— R.S. 22:1111(K)**

A. The commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to R.S. 22:1111(K).

B. In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods until 12:01 a.m. on September 25, 2012, including, but not limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4737. Option for Continuation of Coverage**

A. The commissioner hereby suspends R.S. 22:1046. In furtherance thereof, a health insurance issuer, HMO, PPO,

MCO, or any or all other health insurance entity doing business in Louisiana or regulated by the commissioner who has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on 12:01 a.m. September 25, 2012, or any renewal thereafter. §4737 is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees at any time between 12:01 a.m. August 26, 2012, and 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4739. Notification**

A. If the applicable premium for the policy of health insurance is paid at any time prior to the termination of Emergency Rule 26 or applicable grace period, whichever occurs later, the HMO, PPO, MCO, TPA or any or all other health insurance entity shall send to any and all health care providers and/or health care professionals who have filed a claim with respect to insureds a notice in the form of an Explanation of Benefits, Explanation of Payments, Remittance Advice, or similar communication.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4741. Policy Copy Request**

A. If an insured requests from his insurer a copy of his policy, the insurer shall provide a copy of the requested policy to the insured without any charge or fee.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4743. New Policies**

A. The provisions of Emergency Rule 26 shall not apply to any new policy of insurance for the types of insurance enumerated in §4703 if said insurance policy was issued on or after 12:01 a.m. August 26, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4745. Premium Offset**

A. All insurers regulated by Emergency Rule 26, including, but not limited to, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner and other similar or related entities receiving a claim from an insured owing a premium may offset the premium that is owed by the insured from any claim payment made to the insured under the insurance policy. §4745 is not applicable to health insurance issuers, HMOs, PPOs, MCOs, third party administrators (TPAs) or any other health insurance entities doing business in Louisiana and/or regulated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.



HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4747. Policy Cancellation upon Request**

A. Nothing shall prevent an insurer from cancelling a policy upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4749. Insured's Obligation to Pay Premiums**

A. Unless otherwise cancelled pursuant to the provisions of §4747 herein, nothing in Emergency Rule 26 shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4751. Cancellation for Fraud or Material Representation**

A. Emergency Rule 26 shall not prevent an insurer from canceling or terminating a policy of insurance for fraud or material misrepresentation on the part of the insured.

B. Emergency Rule 26 shall not prevent an insurer from rescission of a health policy in accordance with R.S. 1068 B.(2) and R.S. 1074B. (2).

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4753. Insured's Obligation to Provide Information and Cooperation**

A. Emergency Rule 26 shall not relieve an insured who has a claim caused by Hurricane Isaac or its aftermath from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to the claim.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4755. Interest, Penalties, Fees and Other Charges**

A. The right of an insurer to impose or levy any additional interest, penalty, fee or other charge is hereby suspended until 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4757. Petition for Exemption**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 26 upon the insurer filing with the commissioner a written "Petition for Exemption from Emergency Rule 26" which unequivocally demonstrates that compliance with Emergency Rule 26 will result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4759. Intent and Purpose**

A. The provisions of Emergency Rule 26 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4761. Sanctions for Violations**

A. The commissioner retains the authority to enforce violations of Emergency Rule 26. Accordingly, any insurer enumerated in Emergency Rule 26 or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 26 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:1871, et seq., R.S. 22:1961, et seq., and specifically including, but not limited to, R.S. 22:1964(7), (12) and (14). Additionally, the penalty provisions set forth in LSA-R.S. 22:1969 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 26, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, R.S. 22:1973, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the enforcement authority of the commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 26. Finally, the commissioner may impose any other applicable regulatory sanctions for violations of Emergency Rule 26.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4763. Authority**

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 26. Additionally, the commissioner reserves the right to extend Emergency Rule 26.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4765. Severability Clause**

A. If any section or provision of Emergency Rule 26 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 26, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

#### **§4767. Effective Date**

A. Emergency Rule 26 shall become effective at 12:01 a.m. on August 26, 2012 and shall continue in full force and effect until 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

James J. Donelon  
Commissioner

1209#008

## DECLARATION OF EMERGENCY

### Department of Insurance Office of the Commissioner

Emergency Rule 26—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Isaac—Amended (LAC 37:XI.Chapter 47)

Emergency Rule 26—Amended is issued to address concerns resulting from Hurricane Isaac which made landfall in Louisiana on August 28, 2012. Emergency Rule 26 – Amended is issued pursuant to the plenary authority of the Commissioner of Insurance for the State of Louisiana, including, but not limited to, the following: Proclamation No. 92 BJ 2012 issued on August 26, 2012, by Governor Bobby Jindal declaring a State of Emergency extending from August 26, 2012, through September 25, 2012, unless terminated sooner; the Federal Emergency Management Agency’s Notice of a Major Disaster Declaration FEMA-3347-EM and FEMA-4080-DR; Executive Order No. BJ 2012-16 issued on August 29, 2012, by Governor Bobby Jindal transferring authority over any and all insurance matters to Commissioner of Insurance James J. Donelon (commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:11; R.S. 49:950 et seq.

On August 26, 2012, Governor Bobby Jindal declared a State of Emergency within the state of Louisiana in response to the expected landfall of Tropical Storm Isaac which subsequently became Hurricane Isaac. As a result of the hurricane's landfall, Hurricane Isaac caused extensive power outages and flooding that destroyed many homes and impacted the livelihood of the citizens of Louisiana. This State of Emergency extends from August 26, 2012, through September 25, 2012, unless terminated sooner.

Since the issuance of Proclamation No. 92 BJ 2012, hundreds of thousands of Louisiana citizens have suffered damage due to Hurricane Isaac. In some places it could be several weeks before electricity is restored. The homes of many Louisiana citizens were destroyed, precluding habitation. The damage caused by Hurricane Isaac has resulted in the closing of businesses and financial institutions, the temporary suspension of mail service, the temporary displacement of persons from their homes, loss of personal belongings and temporary loss of employment. This disruption has affected the ability of these citizens to timely pay their insurance premiums, access their insurance policies, and communicate with insurance agents and their respective insurance companies for insurance related matters. Hurricane Isaac has created a mass disruption to the normalcy previously enjoyed by Louisianans and produced an immediate threat to the public health, safety, and welfare of Louisiana citizens.

The commissioner will be hindered in the proper performance of his duties and responsibilities regarding this State of Emergency without the authority to suspend certain statutes in the Louisiana Insurance Code and the rules and regulations that implement the Louisiana Insurance Code including, but not limited to, cancellation, nonrenewal, reinstatement, premium payment and claim filings with regard to any and all types of insurance subject to the Louisiana Insurance Code.

Accordingly, Emergency Rule 26 - Amended is issued and shall apply to all insurers, health maintenance organizations (HMOs), health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner, including any entity enumerated in Emergency Rule 26—Amended, regarding any and all types of insurance, including, but not limited to, flood insurance (not issued pursuant to the NFIP), homeowners insurance, life insurance, group and individual health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers’ compensation insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance (not issued pursuant to a USDA program), marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, HMOs, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, reciprocal insurance and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana. Emergency Rule 26 - Amended is applicable to insureds as defined in §4701 and shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

In the ordinary course of business, insurers, HMOs, group and individual health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner send notices to insureds, many of which are required to do so by statute, giving the insured certain limited periods of time within which to pay premiums or otherwise respond. Hurricane Isaac and its aftermath have produced a disruption in the notification process because of the inability of insureds to receive mail due to mandatory and/or voluntary evacuations and/or the destruction or damage of their homes. Thus, many insureds are currently unable to timely act or respond to such notices or to timely pay insurance premiums and need additional time within which to act or respond.

Some insurers, HMOs, group and individual health and accident insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner may attempt to cancel, nonrenew or not reinstate such insurance policies. Additionally, some insureds with policies in force as of 12:01 a.m. on August 26, 2012, who wish to make timely payment are also prevented from making such payment because of the aforementioned circumstances. This could result in an insured being without coverage and/or potentially uninsured. Emergency Rule 26 - Amended

provides emergency relief to the insureds of Louisiana impacted by Hurricane Isaac and its aftermath so that they will be insured and their coverage will continue under those policies that were in effect as of 12:01 a.m. on August 26, 2012.

**Title 37**  
**INSURANCE**  
**Part XI. Rules**

**Chapter 47. Emergency Rule 26—Suspension of Certain Statutes and Regulations Regarding Cancellations, Non-Renewals, Reinstatements, Premium Payments, Claim Filings and Related Provisions Regarding Any and All Insurance Matters Affecting Insureds in Louisiana Caused by Hurricane Isaac—Amended**

**§4701. Benefits, Entitlements, and Protections**

A. The benefits, entitlements and protections of Emergency Rule 26 shall be applicable to insureds who, as of 12:01 a.m. on August 26, 2012, had a policy, insurance contract or certificate of coverage for any of the types of insurance enumerated in §4703 and reside in the state of Louisiana. Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

B. Effective 12:01 a.m. September 8, 2012, the benefits, entitlements and protections of Emergency Rule 26 shall only be applicable to insureds who, as of 12:01 a.m. on August 26, 2012, had a policy, insurance contract or certificate of coverage for any of the types of insurance enumerated in §4703 and reside in one of the following parishes: Ascension, Assumption, East Baton Rouge, East Feliciana, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, West Baton Rouge and West Feliciana. In order to obtain the benefits, entitlements and protections of Emergency Rule 26, an insured who resides in a parish enumerated in §4701.B shall provide written notice to their insurer that said insured was impacted by Hurricane Isaac in a manner including, but not limited to, evacuation, displacement, temporary relocation, or loss of power. Such written notice shall be submitted to the insurer, HMO, health and accident insurer, property and casualty insurer, surplus lines insurer and any and all other entities doing business in Louisiana and/or regulated by the commissioner before 12:01 a.m. on September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4703. Applicability**

A. Emergency Rule 26 shall apply to every insurer, health insurance issuer, HMO, PPO, MCO, PBM or TPA acting on behalf of an insurer, health insurance issuer, health maintenance organization, preferred provider organization or managed care organization with regard to any and all types of insurance, including, but not limited to, flood insurance (not issued pursuant to the NFIP), homeowners insurance, life insurance, health insurance, group and individual health and accident insurance, limited benefit insurance, vehicle insurance, liability insurance, workers' compensation

insurance, burglary and forgery insurance, glass insurance, fidelity and surety insurance, title insurance, fire and extended coverage insurance, steam boiler and sprinkler leakage insurance, crop and livestock insurance (not issued pursuant to a USDA program), marine and transportation insurance, credit life, medical supplement insurance, credit property and casualty insurance, annuity insurance, professional and medical malpractice liability insurance, property and casualty insurance, all surplus lines insurance, self insurance funds, disability insurance, reciprocal insurance, long term care insurance, short term health insurance, stop loss insurance, excess loss insurance, Medicare supplement insurance, Medicare select insurance, preferred provider organizations (PPOs), health maintenance organizations (HMOs), managed care organizations (MCOs), and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4705. Suspension of Statutory or Regulatory Provisions**

A. Any statutory or regulatory provision, or any policy provision contained in any policy of insurance set forth in §4703 shall be suspended to the extent that said statutory or regulatory provision, or policy provision, imposed upon an insured a time limit to perform any act or transmit information or funds with respect to any insurance enumerated in §4703, which act or transmittal was to have been performed on or after 12:01 a.m. on August 26, 2012. The time limit for any such performance, act or transmittal shall be suspended until 12:01 a.m. September 25, 2012, or thereafter.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4707. Suspension of Notice of Cancellation, Notice of Nonrenewal, Nonreinstatement**

A. Emergency Rule 26 hereby suspends any notice of cancellation, notice of nonrenewal, nonreinstatement or any other notice related to any of the types of insurance enumerated in §4703 that was in force and effect as of 12:01 a.m. on August 26, 2012. Accordingly, any such notices that had not resulted in the actual cancellation, nonrenewal or nonreinstatement of the types of insurance enumerated in §4703 prior to 12:01 a.m. on August 26, 2012, shall be null and void. Furthermore, any such notice shall be reissued de novo to the insured in accordance with existing statutory requirements and any such notice shall not be issued to the insured until 12:01 a.m. September 25, 2012, or thereafter.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4709. Suspension of Louisiana Insurance Code Provisions**

A. Any and all provisions in the Louisiana Insurance Code relative to providing for a premium finance company to act on behalf of and/or as agent for an insurance company are hereby suspended. In furtherance thereof, the right,

entitlement, legal provision or any other form of legal authority, including any policy provision, of any and all insurers to send a notice of cancellation is suspended effective 12:01 a.m. on August 26, 2012, and shall remain suspended until 12:01 a.m. September 25, 2012. The right of any insurer to utilize the services of a premium finance company to issue any such notice is suspended during the pendency of Emergency Rule 26.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4711. Suspension of Cancellation, Nonrenewal or Nonreinstatement**

A. Except as provided for in §4747, the cancellation, nonrenewal or nonreinstatement of any and all insurance enumerated in §4703 that had not become effective before 12:01 a.m. on August 26, 2012, is hereby suspended and shall be deferred until 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4713. Act of God; Cancellation and Nonrenewal for Homeowners Insurance**

A. As set forth in R.S. 22:1336, no policy shall be cancelled or nonrenewed because of a claim resulting from Hurricane Isaac or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4715. Suspension of Statutory or Regulatory Provisions**

A. All health insurance issuers, HMO's, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner with insureds in the state of Louisiana shall waive any and all restrictions relative to out-of-network access to all covered health care services. To avoid delays in accessing care, all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall waive requirements for medical certifications or pre-certifications, referrals, medical necessity reviews and notification of hospital admissions. The right of all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner to conduct retrospective medical necessity reviews and retrospectively deny any and all claims is hereby suspended for non-elective health care services. Additionally, the right of all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner to recoup or offset with regard to any and all claims for non-elective health care services is hereby suspended. Non-elective health care services are those that are urgent, or necessary in order to not place the health of the insured at risk and are not provided in an emergency department of a hospital.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4717. Non-Elective Health Care Services**

A. In the event health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner pend a non-elective health care services claim(s), as allowed pursuant to Emergency Rule 26, and is subsequently entitled to cancel or terminate a policy for non-payment of a premium or rescission pursuant to R.S. 22:1068.B(2) and R.S. 22:1074B.(2), health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall pay those non-elective claims to the health care professionals at the following rate or allowance.

1. For contracted health care providers or health care professionals, 50 percent of the contracted reimbursement rate.

2. For non-contracted health care providers or health care professionals, 50 percent of the non-participating rate or allowance.

3. With regard to claims submitted pursuant to §4717, when the underlying policy is cancelled or terminated for non-payment of premium or rescission pursuant to R.S. 22:1068.B.(2) and R.S. 22:1074B.(2), health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner shall be allowed to conduct medical necessity reviews on claims related to non-elective services. Non-elective services are those services that are, urgent or necessary in order to not place the health of the insured at risk and are not provided in an emergency department of a hospital.

4. With regard to any and all non-elective claims paid by health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs and any other health insurance entities doing business in Louisiana or regulated by the commissioner pursuant to the requirements of §4717, the provisions of R.S. 22:1838 or R.S. 22:1859 are hereby suspended and recoupment is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4719. Emergency Health Care Services**

A. R.S. 22:1821 et seq., remains in effect regarding all health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs, and any other health insurance entities doing business in Louisiana or regulated by the commissioner, and any and all other health insurance regulated by the Louisiana Insurance Code. Emergency services claims shall be covered as if in-network and health care professionals and health care providers shall be reimbursed in accordance with the Patient Protection and Affordable Care Act specifically, section 2719A and 75 FR 37188 and health care professionals and health care providers shall be prohibited from balance billing the insured, policyholder, member, subscriber, enrollee and certificate holder.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4721. Compliance with Health Care Consumer Billing and Protection Act**

A. All health care professionals and health care providers rendering services to an insured in the state of Louisiana shall comply with the Health Care Consumer Billing and Protection Act pursuant to R.S. 22:1871, et seq. Health care providers and/or health care professionals who file a claim and/or accept payment for non-elective health care services and emergency health care services shall have legally released the insureds from any further financial obligation for the health care services rendered. Health care providers and/or health care professionals shall be deemed to have released, discharged and waived any and all rights to take any legal action or redress, either in person or via transfer, assignment or subrogation, to collect any unpaid amounts from insureds and/or health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner. Any violation by health care providers and/or health care professionals of this provision may be deemed an unfair trade practice under R.S. 22:1871 et seq. and may be referred to the Louisiana Attorney General. The Louisiana Attorney General may pursue remedies as provided for in R.S. 51:1401 et seq.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4723. Assuring Portability—Compliance**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:1061, et seq., titled Assuring Portability, Availability and Renewability of Health Insurance Coverage, and any applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4725. Assuring Portability—Suspension**

A. All health insurance issuers and HMOs shall maintain compliance with R.S. 22:1061, et seq., titled Assuring Portability, Availability and Renewability of Health Insurance Coverage and applicable federal law, except for the time periods enumerated in §4725 shall be suspended during the pendency of Emergency Rule 26. All such notices required in §4725 must be reissued de novo on or after 12:01 a.m. on September 25, 2012.

B. The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage.

C. The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage for loss of employer contributions) to be eligible for special enrollment in accordance with the Patient Protection and Affordable Care Act or applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4727. Suspension of Cancellation, Nonrenewal, and Nonreinstatement Provisions**

A. All cancellation, termination, nonrenewal and nonreinstatement provisions in Title 22, including, but not limited to, R.S. 22:1068, 22:1074, 22:978, 22: 977 and 22:272 are hereby suspended.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4729. Denying, Pending or Rejecting a Claim**

A. The commissioner hereby suspends the right of denying, pending or rejecting a claim from any pharmacists or pharmacy for a 30 day supply of prescription medications, regardless of the date of the last refill. In furtherance of this suspension, health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner shall pay all such claims for reimbursement submitted by a pharmacist or pharmacy.

1. The commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a thirty (30) day supply.

2. The commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

3. All health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4731. Cancellation or Termination of Policy for Non-Payment**

A. Health insurance issuers, HMOs, PPOs, MCOs, PBMs or TPAs or any or all other health insurance entities doing business in Louisiana or regulated by the commissioner may pend a claim(s), as required pursuant Emergency Rule 26, and may subsequently cancel or terminate a policy only for non-payment of premium in accordance with the procedure set forth in Emergency Rule 26 or for rescission in accordance with R.S. 1068 B.(2) and R.S. 1074B. (2).

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4733. Discount Billing**

A. Those amounts representing coinsurance, copayments, deductibles, noncovered health care services or other amounts identified by the health insurance issuer, HMO, PPO, MCO, PBMs or TPA or any or all other health insurance entity doing business in Louisiana or regulated by the commissioner on an explanation of benefits as the amount for which the insured is liable shall not be considered discount billing or dual billing pursuant R.S. 22:1871 et seq., and remains the obligation of the insured or

as provided for pursuant to the Patient Protection and Affordable Care Act or other applicable federal law.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4735. Payment of Medicare Supplement Premiums—  
R.S. 22:1111(K)**

A. The commissioner hereby suspends the requirements that the payment of Medicare supplement premiums can only be made pursuant to R.S. 22:1111(K).

B. In furtherance of this suspension, any policies that contain restrictive language relative to modes of premium payment shall allow for the acceptance of other payment methods until 12:01 a.m. on September 25, 2012, including, but not limited to, credit card, debit card, FEMA voucher, federal assistance, state assistance, or any and all other related or similar payment methods.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4737. Option for Continuation of Coverage**

A. The commissioner hereby suspends R.S. 22:1046. In furtherance thereof, a health insurance issuer, HMO, PPO, MCO, or any or all other health insurance entity doing business in Louisiana or regulated by the commissioner who has issued a group health insurance policy shall provide to all members or certificate holders under said group policy the option for the continuation of coverage, which said option shall begin on 12:01 a.m. September 25, 2012, or any renewal thereafter. §4737 is only applicable in those situations where the employer to whom the group policy had been issued remains in business and continues to offer said group health insurance to active employees at any time between 12:01 a.m. August 26, 2012, and 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4739. Notification**

A. If the applicable premium for the policy of health insurance is paid at any time prior to the termination of Emergency Rule 26 or applicable grace period, whichever occurs later, the HMO, PPO, MCO, TPA or any or all other health insurance entity shall send to any and all health care providers and/or health care professionals who have filed a claim with respect to insureds a notice in the form of an Explanation of Benefits, Explanation of Payments, Remittance Advice, or similar communication.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4741. Policy Copy Request**

A. If an insured requests from his insurer a copy of his policy, the insurer shall provide a copy of the requested policy to the insured without any charge or fee.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4743. New Policies**

A. The provisions of Emergency Rule 26 shall not apply to any new policy of insurance for the types of insurance enumerated in §4703 if said insurance policy was issued on or after 12:01 a.m. August 26, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4745. Premium Offset**

A. All insurers regulated by Emergency Rule 26, including, but not limited to, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner and other similar or related entities receiving a claim from an insured owing a premium may offset the premium that is owed by the insured from any claim payment made to the insured under the insurance policy. §4745 is not applicable to health insurance issuers, HMOs, PPOs, MCOs, third party administrators (TPAs) or any other health insurance entities doing business in Louisiana and/or regulated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4747. Policy Cancellation upon Request**

A. Nothing shall prevent an insurer from cancelling a policy upon the documented written request or written concurrence of the insured.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4749. Insured's Obligation to Pay Premiums**

A. Unless otherwise cancelled pursuant to the provisions of §4747 herein, nothing in Emergency Rule 26 shall be construed to exempt or excuse an insured from the obligation to pay the premiums otherwise due for actual insurance coverage provided.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4751. Cancellation for Fraud or Material Representation**

A. Emergency Rule 26 shall not prevent an insurer from canceling or terminating a policy of insurance for fraud or material misrepresentation on the part of the insured.

B. Emergency Rule 26 shall not prevent an insurer from rescission of a health policy in accordance with R.S. 1068 B.(2) and R.S. 1074B. (2).

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4753. Insured's Obligation to Provide Information and Cooperation**

A. Emergency Rule 26 shall not relieve an insured who has a claim caused by Hurricane Isaac or its aftermath from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to the claim.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4755. Interest, Penalties, Fees and Other Charges**

A. The right of an insurer to impose or levy any additional interest, penalty, fee or other charge is hereby suspended until 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4757. Petition for Exemption**

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 26 upon the insurer filing with the commissioner a written "Petition for Exemption from Emergency Rule 26" which unequivocally demonstrates that compliance with Emergency Rule 26 will result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4759. Intent and Purpose**

A. The provisions of Emergency Rule 26 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4761. Sanctions for Violations**

A. The commissioner retains the authority to enforce violations of Emergency Rule 26. Accordingly, any insurer enumerated in Emergency Rule 26 or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 26 shall be subject to prosecution by the commissioner under any applicable provisions of the Louisiana Insurance Code, including the provisions of the R.S. 22:1871, et seq., R.S. 22:1961, et seq., and specifically including, but not limited to, R.S. 22:1964(7), (12) and (14). Additionally, the penalty provisions set forth in LSA-R.S. 22:1969 shall be applicable. These provisions include penalties of \$1,000 for each separate act, or \$25,000 for each separate act if the violator knew or reasonably should have known he was in violation of Emergency Rule 26, as well as a cease and desist order and the imposition of other penalties and suspension or revocation of the license. Additionally, R.S. 22:1973, which, among other things, imposes the obligation of good faith and fair dealing shall also be subject to the enforcement authority of the commissioner. This law sets forth penalties and exemplary damages which shall be enforceable by the commissioner for any violation of Emergency Rule 26. Finally, the commissioner may impose any other applicable regulatory sanctions for violations of Emergency Rule 26.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4763. Authority**

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 26. Additionally, the commissioner reserves the right to extend Emergency Rule 26.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4765. Severability Clause**

A. If any section or provision of Emergency Rule 26 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 26, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

**§4767. Effective Date**

A. Emergency Rule 26 shall become effective at 12:01 a.m. on August 26, 2012 and shall continue in full force and effect until 12:01 a.m. September 25, 2012.

AUTHORITY NOTE: Promulgated in accordance with Executive Order BJ 2012-16.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 38:

James J. Donelon  
Commissioner

1209#081

**DECLARATION OF EMERGENCY**

**Department of Public Safety and Corrections  
Office of Motor Vehicles**

Driver Education (LAC 55:III.143, 154, and 159)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles finds that an imminent peril to the public safety requires adoption of a Rule upon shorter notice than that provided in R.S. 49:953(A) as the Act 475 of the 2012 Regular Session became effective August 1, 2012. Act 475 increased the age that first time driver's license applicants have to take a 30 hour classroom course and an eight hour behind-the-wheel course to be licensed from 17 to 18 years of age. The Act also limited the 8 hour behind-the-wheel instruction to four hours per day per student. Additionally, the Act also added a requirement that those over the age of 18 must have 8 hours of behind-the-wheel training in addition to the existing 6 hour classroom instruction. The Office of Motor Vehicles is proposing a permanent Rule to correct this issue, but such Rule will not take effect until November or December of 2012, which is too late to implement the new law and provide for new course curriculum to schools currently operating. Furthermore, the Office of Motor Vehicles is proposing to add a military exemption to allow for active duty military status persons to submit proof of successful completion of military driver



training in lieu of the completion certificate currently required for third party testers. In order to provide driving schools with the necessary course curriculum to implement Act 475, it is necessary to adopt this Emergency Rule to have this exception in place until the corresponding permanent rules can be adopted. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

**Title 55  
PUBLIC SAFETY**

**Part III. Motor Vehicles**

**Chapter 1. Driver's License**

**Subchapter A. General Requirements**

**§143. Commercial Driving Schools—36 Hours**

A. As used in this Chapter, the following terms have the meanings described below.

*30 Hour Classroom Course*—a program which shall consist of a course of not less than 30 hours of classroom instruction required of first-time driver's license applicants' age 15 through 17 excluding lunch breaks. The classroom course may include a web based course equivalent to 30 hours of classroom instruction, which has been pre-approved by DPS. This course shall be conducted utilizing the curriculum contained in this subchapter.

\* \* \*

*Six Hour Pre-Licensing Course*—a program which shall consist of six hours of classroom instruction required of first-time driver's license applicants eighteen years of age and above, if a 30-hour classroom course and eight hour behind the wheel course is not completed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) AND R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, 22:286 (April 1996), amended LR 38:1974 (August 2012), amended LR 38:

**§154. Driver Education Curriculum**

A. - C.10. ...

D. Eight Hour Behind-the-Wheel Curriculum. The behind-the-wheel portion of the curriculum will be limited to no more than four hours behind the wheel for each student daily. There shall be no more than two students in the vehicle with the instructor. Upon completion of the behind the wheel portion a skills assessment shall be performed by the instructor. A road skills test shall be administered and the student shall attain a score of 70 percent or more to receive a certificate of successful completion.

1. - 5. ...

E. Six Hour Pre-Licensing Course

1. - 3. ...

4. Eight Hour Behind-the-Wheel Curriculum. The eight hour behind-the-wheel curriculum shall be done in the same manner and under the same conditions as provided in §154(D).

5. The driver education completion certificate shall be completed when a student has attained a score of 80 percent or better on the written knowledge test and a score of 70 percent or better on the eight hour behind the wheel portion of the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A) (1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1985 (August 2012), LR 38:

**§159. Military Exemption**

A. Any active duty military person who has not been previously licensed in this state or another state, upon proving his active duty status, may submit proof of successful completion of military driver training, which is essentially equivalent to the training required in this part, in lieu of providing the completion certificate required in this part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461, and R.S. 32:408.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:

Jill P. Boudreaux  
Undersecretary

1209#053

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

2012-2013 Commercial King Mackerel Season Closure

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by the commission in its resolution of January 5, 2012, to close the 2012-13 commercial king mackerel season in Louisiana state waters when he is informed that the designated portion of the commercial king mackerel quota for the Gulf of Mexico has been filled, or was projected to be filled, the Secretary hereby declares:

Effective 12:00 noon, August 22, 2012, the commercial fishery for king mackerel in Louisiana waters will close and remain closed through June 30, 2013. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fisherman. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel within or without Louisiana waters. Effective with this closure, no person shall possess king mackerel in excess of a daily bag limit within or without Louisiana waters. The prohibition on sale/purchase of king mackerel during the closure does not apply to king mackerel that were legally harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor provided appropriate records in accordance with R.S. 56:306.5 and 56:306.6 are properly maintained.

The secretary has been notified by National Marine Fisheries Service that the commercial king mackerel season in Federal waters of the Gulf of Mexico will close at 12:00 noon, August 22, 2012 and remain closed through June 30,



2013. Closing the season in State waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

Robert J. Barham  
Secretary

1209#003

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### 2012 Oyster Season on Public Oyster Seed Grounds

Editor's Note: This Emergency Rule is being repromulgated to correct a submission error. The original Emergency Rule can be viewed on page 1947 of the August 20, 2012 *Louisiana Register*.

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953, and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare the 2012/2013 oyster season as follows:

The Little Lake Public Oyster Seed Grounds as described in Louisiana Administrative Code (LAC) 76:VII:521, and the Vermilion/East and West Cote Blanche Bay/Atchafalaya Bay Public Oyster Seed Grounds as described in LAC 76:VII:507 and 76:VII:509 and shall open one-half hour before sunrise on Wednesday, September 5, 2012.

All remaining public oyster seed grounds and reservations, as described in R.S. 56:434, LAC 76:VII.511, LAC 76:VII.513, and LAC 76:VII.517, shall open at one-half hour before sunrise on Monday, October 29, 2012, except for the Bay Gardene and Sister Lake Public Oyster Seed Reservations which shall remain closed. That portion of the public oyster seed grounds east of the Mississippi River, south of the Mississippi River Gulf Outlet (MRGO), and west of a line running generally from California Point northeast to Point Gardner shall be restricted to the harvest of market sacks only and no seed oyster harvest shall be allowed.

The oyster season in west cove portion of the Calcasieu Lake public oyster area, as described in R.S. 56:435.1.1, shall open one-half hour before sunrise on Thursday, November 1, 2012. The sack limit for west cove portion of Calcasieu Lake is set at 10 sacks per person per vessel per day as provided for in R.S. 56:435.1.1. However, these conservation actions shall not supersede public health closures.

The following areas shall remain closed for the entire 2012/2013 oyster season:

1. The Bay Gardene Public Oyster Seed Reservation;
2. The Sister Lake Public Oyster Seed Reservation, including the 2012 cultch plant;

3. The east side of the Calcasieu Lake public oyster area;

4. Sabine Lake Public Oyster Area (as described in R.S. 56:435.1);

5. The 2011 and 2012 cultch plants within the following coordinates:

Mississippi Sound (2011) – St. Bernard Parish

- a. 30 degrees 07 minutes 17.56 seconds N  
89 degrees 27 minutes 52.39 seconds W
- b. 30 degrees 07 minutes 26.94 seconds N  
89 degrees 27 minutes 36.20 seconds W
- c. 30 degrees 07 minutes 07.11 seconds N  
89 degrees 26 minutes 45.48 seconds W
- d. 30 degrees 06 minutes 40.93 seconds N  
89 degrees 27 minutes 14.09 seconds W

California Bay (2011) – Plaquemines Parish

- a. 29 degrees 30 minutes 40.42 seconds N  
89 degrees 34 minutes 03.19 seconds W
- b. 29 degrees 30 minutes 27.18 seconds N  
89 degrees 33 minutes 21.85 seconds W
- c. 29 degrees 29 minutes 54.99 seconds N  
89 degrees 33 minutes 20.24 seconds W
- d. 29 degrees 30 minutes 02.74 seconds N  
89 degrees 34 minutes 03.93 seconds W

Hackberry Bay (2012)—Lafourche Parish

- a. 29 degrees 25 minutes 21.16 seconds N  
90 degrees 02 minutes 59.53 seconds W
- b. 29 degrees 24 minutes 58.30 seconds N  
90 degrees 02 minutes 51.34 seconds W
- c. 29 degrees 24 minutes 29.25 seconds N  
90 degrees 03 minutes 24.92 seconds W
- d. 29 degrees 24 minutes 45.37 seconds N  
90 degrees 03 minutes 35.33 seconds W

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered. The secretary shall notify the Chairman of the Wildlife and Fisheries Commission of his intention to close an area.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Ann L. Taylor  
Chairman

1209#045

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Commercial and Recreational Fisheries Closure

In accordance with the emergency provisions of R.S. 49:953 and R.S.49:967 of the Administrative Procedure Act, and under the authority of R.S. 56:6.1 which provides the Secretary of the Department of Wildlife and Fisheries with authority to declare a closed season on any and all species of fish found or existing in the waters of the state; and, a declaration of emergency adopted by the Wildlife and Fisheries Commission on August 2, 2012, the Secretary of the Department of Wildlife and Fisheries hereby closes all commercial and recreational fishing except for recreational and charterboat angling; and, the harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329 effective immediately September 4, 2012, in the following area:

That portion of state outside waters seaward a distance of one mile from the inside/outside shrimp line from the eastern shore of Belle Pass at 90 degrees 13 minutes 30 seconds west longitude eastward to the western shore of Caminada Pass at 90 degrees 02 minutes 46.597 seconds west longitude.

Effective with the closure, no person shall take or possess or attempt to take any species of fish for commercial purposes from waters within the closed area. The possession, sale, barter, trade, or exchange of any fish or other aquatic life from the closed area during the closure is prohibited, except as provided herein. Recreational fishing shall be allowed in accordance with the provisions contained herein.

Recreational fishing is limited to recreational angling which shall include licensed charter boat guides, and shall authorize harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329.

This action is being taken due to the emergence of a large tar mat and large concentrations of tar balls onto adjacent beaches following the passage of Hurricane Isaac.

Robert J. Barham  
Secretary

1209#016

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Recreational and Commercial Fisheries Closure

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:6.1, the Wildlife and Fisheries Commission hereby closes all commercial and recreational fishing, except for recreational and charterboat angling and

the harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329 effective immediately September 6, 2012, in the following area:

That portion of state outside waters seaward a distance of one mile from the inside/outside shrimp line from the eastern shore of Belle Pass at 90 degrees 13 minutes 30 seconds west longitude eastward to the western shore of Caminada Pass at 90 degrees 02 minutes 46.597 seconds west longitude.

Effective with the closure no person shall take or possess or attempt to take any species of fish for commercial purposes from waters within the closed area. The possession, sale, barter, trade, or exchange of any fish or other aquatic life from the closed area during the closure is prohibited, except as provided herein. Recreational fishing shall be allowed in accordance with the provisions contained herein.

Recreational fishing is limited to recreational angling which shall include licensed charter boat guides, and shall authorize harvest of bait by wholesale/retail seafood dealers who hold a special bait dealers permit and who harvest bait for sale to recreational fishermen exclusively, pursuant to the provisions of LAC 76:VII.329.

This action is being taken due to the emergence of a large tar mat and large concentrations of tar balls onto adjacent beaches following the passage of Hurricane Isaac.

Ann L. Taylor  
Chairman

1209#046

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Temporary Fall Inshore Shrimp Season Closure

In accordance with the emergency provisions of R.S. 49:953 and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and a declaration of emergency adopted by the Wildlife and Fisheries Commission on August 2, 20102 which authorizes the Secretary of the Department of Wildlife and Fisheries to close the fall shrimp season when biological and technical data indicate the need to do so or if enforcement problems develop; and, to close and reopen all or parts of state inside and outside waters if significant numbers of small white shrimp are found in these waters, the Secretary hereby declares:

That portion of state inside waters north of the inside/outside shrimp line as described in R.S. 56:495(A) from eastern shore of Bayou Lafourche westward to the Atchafalaya River Ship Channel at Eugene Island as delineated by the channel red buoy line to close to shrimping at 6:00 pm August 27, 2012 and reopen to shrimping at 6:00 pm September 10, 2012.

Recent biological samples taken by Office of Fisheries biologists in that portion of state inside waters to close indicate that large numbers of small sublegal size shrimp are

present in these waters and the season is being closed to allow sufficient time for these shrimp to grow to marketable sizes. All remaining state inside waters shall remain open to shrimping.

Robert J. Barham  
Secretary

1209#006

**DECLARATION OF EMERGENCY**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Wild Alligator Harvest Season Postponed**

Due to the expected landfall of Tropical Storm Isaac near southeastern Louisiana and its predicted impact on Louisiana's coastal areas, including extensive coastal flooding and displacement of residents, who may not be able to return to their homes until flood waters recede.

Additionally many communities in the affected areas may be without electricity, water, gasoline and ice which will make it difficult for the hunters and processors to proceed with the harvesting and processing of alligators. Alligators will be displaced and it may take a few days for them to return to normal feeding activity.

Therefore, it is necessary to postpone the August 29<sup>th</sup> 2012 opening of the East Zone Wild Alligator Harvest Season. In accordance with the provisions of R.S. 56:6.1 the August 29, 2012 opening date for the East Zone Wild Alligator Harvest Season is postponed for three days and will now open on Saturday September 1, 2012.

This Declaration of Emergency shall become effective on September 29, 2012 and shall remain in effect until September 1, 2012 unless extended by the secretary.

Robert J. Barham  
Secretary

1209#009

# Rules

## RULE

### Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.409, 705, 707, and 3301)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §409. Calculating a 9-12 Assessment Index, §705. AMO, §707. Safe Harbor, and §3301. Inclusion of New Schools. Changes in Bulletin 111, Chapter 4, provide detail on how incentive points will be earned for End-of-Course (EOC) tests taken at the middle school. The changes in Bulletin 111, Chapter 7, provide detail on proficiency levels for the Annual Measurable Objectives (AMO). Changes in Bulletin 111, Chapter 7, provide detail to remove policy related to the Graduation Exit Examination (GEE), as the GEE will be replaced by end-of-course tests. Changes in Bulletin 111, Chapter 33, provide detail to remove policy relative to the use of graduation cohorts in school performance score calculations.

Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

## Title 28

### EDUCATION

#### Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

##### Chapter 4. Assessment, Attendance, and Dropout Index Calculations

###### §409. Calculating a 9-12 Assessment Index

A. All operational end-of-course (EOC) tests will be used in the calculation of the assessment index.

1. All subjects will be weighted equally.

2. Algebra I EOC passing test scores earned by students at a middle school will be included in the SPS calculations of the high school to which the student transfers. The scores will be included in the accountability cycle that corresponds with the students' first year of high school. Middle schools will earn incentive points for EOC passing scores the same year in which the test was administered.

a. Incentive Points will be awarded as follows:

- i. excellent = 50;
- ii. good = 25.

A.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:2118 (July 2011), repromulgated LR 37:2382 (August 2011), LR 37:3200 (November 2011), LR 38:1212 (May 2012), LR 38:2357 (September 2012).

##### Chapter 7. Subgroup Component

###### §705. AMO

A. The annual measurable objective (AMO) is the percent of students required to reach the proficient level in a given year on the standards-based assessments, which through 2005 will include English language arts and mathematics tests for 4th, 8th, and 10th grades.

1. Beginning in 2006, English language arts and mathematics test results from grades 3-8 LEAP, iLEAP, high school EOC Algebra I and English II, LAA 1, and LAA 2 will be used to calculate the percent proficient for the subgroup component (for schools and districts).

B. As required in NCLB, the AMOs have been established based on the baseline percent proficient score (proficient = CRT level of basic, mastery, or advanced) in English-language arts and mathematics in the 20th percentile school, using the 2002 CRT test scores in ELA and mathematics for grades 4, 8, and 10.

1. For Proficiency Levels see chart below.

Proficiency	
LEAP/iLEAP	Basic, Mastery, Advanced
EOC	Good, Excellent
LAA 1	Meets or Exceeds Standard
LAA 2	Approaching Basic, Basic

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 33:253 (February 2007), LR 38:2357 (September 2012).

###### §707. Safe Harbor

A. - E. ...

F. Beginning in 2006-07 for schools and districts, English language arts and mathematics test results from grades 3-8 LEAP, iLEAP, high school EOC Algebra I and English II, LAA 1, and LAA 2 will be used to calculate the reduction of non-proficient students in Safe Harbor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2743 (December 2003), amended LR 32:1025 (June 2006), LR 33:253 (February 2007), LR 33:2594 (December 2007), LR 38:1213 (May 2012), LR 38:2357 (September 2012).

**Chapter 33. New Schools and/or Significantly Reconfigured Schools**

**§3301. Inclusion of New Schools**

A. - E.3. ...

4. The graduation index calculated from the school's first graduating class shall be included as a baseline SPS indicator, along with two years of adjusted assessment data in year two of the school's operation.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010), LR 37:3201 (November 2011), LR 38:2358 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#019

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices—Administrative Error (LAC 28:CXI.312)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 118—Statewide Assessment Standards and Practices*: §312. Administrative Error. Bulletin 118, contains the state Board of Elementary and Secondary Education (SBESE) and the Office of Standards, Assessments and Accountability (OSAA) test policy rules, guidelines, and procedures for easy access during statewide test administration. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security. New policy language was added to Chapter 3.

**Title 28**

**EDUCATION**

**Part CXI. Bulletin 118 Statewide Assessment Standards and Practices**

**Chapter 3. Test Security**

**§312. Administrative Error**

A. - H. ...

I. Where retests are available, LEAs may request that SPS calculations include retest results through a waiver request to BESE for accountability purposes. In such waiver request, the LEA shall demonstrate that it financed retests for all affected students and that it took corrective action as necessary to prevent a recurrence of the irregularity, including specific measures regarding any employee found to have willfully caused the irregularity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), LR 34:66 (January 2008), LR 34:1351 (July 2008), LR 35:218

(February 2009), LR 36:967 (May 2010), LR 38:33 (January 2012), LR 38:748 (March 2012), LR 38:2358 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#020

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 129—The Recovery School District—Type 5 Charter School (LAC 28:CXLV.703)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 129—The Recovery School District*: §703. Type 5 Charter School. Currently, the RSD Student Hearing Office conducts all student expulsion hearings for RSD New Orleans direct-run schools, and on an as-requested basis, conducts expulsion hearings for RSD charter schools and Orleans Parish schools. Beginning in the 2012-2013 school year, the RSD Student Hearing Office will conduct student expulsion hearings for all RSD schools in New Orleans, including RSD Type 5 charter schools. The RSD Student Hearing Office will work in consultation with the RSD's Special Education Services Office to ensure that students with special needs are being served appropriately. The RSD Student Hearing Office will use each charter school's individual student discipline policies, however, the actual expulsion hearing and appeal process will be the same for every student, regardless of which RSD school they attend. As part of the RSD's commitments to equity, the revision to *Bulletin 129—The Recovery School District*, was created in collaboration with charter school leaders to provide for the use of the RSD Student Hearing Office for all expulsion hearings for students attending RSD schools in New Orleans. Use of a single hearing office will serve to ease administrative burdens on charter schools, increase student expulsion data reliability and availability, and ensure that proper due process procedures are applied uniformly for all students in RSD schools.

**Title 28**

**EDUCATION**

**Part CXLV. Bulletin 129—The Recovery School District Chapter 7. Manner of Operation of Failed Schools §703. Type 5 Charter School**

A. BESE may direct that a school transferred from an LEA to the RSD be operated by a nonprofit organization holding a charter for a Type 5 charter school, under the auspices of the RSD.

B. The RSD superintendent may require Type 5 charter schools to utilize a unified hearing office established by the recovery school district for student expulsion hearings. Type 5 charter schools shall comply with all policies and procedures established by the RSD to implement this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5 (A) (1), R.S. 17:10.5(B), R.S. 17:10.7(A)(1), R.S. 17:10.7(B)(1), R.S. 17:1990(A)(2); and R.S. 17:3973 (2)(b) (v)(aa).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:1125 (April 2011), amended LR 38:2358 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#029

## RULE

### Board of Elementary and Secondary Education

Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel  
(LAC 28:CXLVII.105, 301, 305, 307, 309, 311, 319, 321, 323, 325, 701, 901, 903, and 905)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel*: §105. Framework for LEA Personnel Evaluation Programs, §301. Overview of Personnel Evaluation, §305. Measures of Growth in Student Learning—Non-Tested Grades and Subjects, §307. Observation Tools, §309. Standards of Effectiveness, §311. Evaluators, §319. Staff Development for Personnel Involved in Evaluation, §321. Evaluation Records Guidelines, §323. Job Descriptions, §325. Extenuating Circumstances, §701. Annual Summary Reporting Format, §901. Appendix A, §903. Appendix B, and §905. Definitions. The policy revisions provide guidelines for incorporating measures of student growth into teacher and administrator evaluations to align the evaluation of school personnel with Act 54 of the 2010 Regular Legislative Session. These changes reflect adjustments to this policy, based upon feedback gathered in the piloting of the Compass educator support and evaluation system.

#### Title 28

#### EDUCATION

### Part CXLVII. Bulletin 130—Regulations for the Evaluation and Assessment of School Personnel

#### Chapter 1. Overview

#### §105. Framework for LEA Personnel Evaluation Programs [Formerly §109]

A. ...

B. Local personnel evaluation plans defined by the board shall include, at a minimum, the following elements.

1. - 2. ...

3. Observation/Data Collection Process. The evaluator or evaluators of each teacher and administrator shall conduct a minimum of one formal, announced observation and at least one other informal observation of instructional practice per academic year. Each formal teacher observation must last at least one complete lesson. For each formal observation, evaluators shall conduct a pre-observation conference with their evaluatee during which the teacher or administrator shall provide the evaluator or evaluators with relevant information. For both formal and informal observations, evaluators shall provide evaluatees with feedback following the observation, including areas for commendation as well as areas for improvement. Additional evidence, such as data from periodic visits to the school

and/or classroom as well as written materials or artifacts, may be used to inform evaluation.

4. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2251 (October 2010), amended LR 38:1215 (May 2012), LR 38:2359 (September 2012).

### Chapter 3. Personnel Evaluation

#### §301. Overview of Personnel Evaluation

A. Personnel evaluation for teachers and administrators shall be composed of two parts. Fifty percent of the evaluation shall be composed of applicable measure(s) of growth in student learning. The remaining 50 percent shall be based upon a qualitative assessment of teacher or administrator performance.

1. For teachers, the 50 percent of the evaluation based upon growth in student learning shall measure the growth of their students according to a pre-determined assessment method, using the value-added model, where available, and alternate measures of student growth according to state guidelines, where value-added data are not available. For administrators, the 50 percent of the evaluation based upon growth in student learning shall incorporate a school-wide measure of growth.

2. The 50 percent of the evaluation that is based on a qualitative measure of teacher and administrator performance shall include a minimum of one formal, announced observation or site visit and at least one other informal observation or site visit. This portion of the evaluation may include additional evaluative evidence, such as walk-through observation data and evaluation of written work products.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1215 (May 2012), amended LR 38:2359 (September 2012).

#### §305. Measures of Growth in Student Learning—Non-Tested Grades and Subjects

A. - B. ...

C. A minimum of two student learning targets shall be identified for each teacher in NTGS. The department shall provide an evaluative tool for evaluators to use in assessing the quality and attainment of student learning targets.

1. State-approved common assessments shall be used as part of the body of evidence measuring students' attainment of learning targets, where available. At the beginning of each academic year, the department shall publish a list of state-approved common assessments to be used in identified non-tested grades and subject areas.

2. Where no state-approved common assessments for NTGS are available, evaluatees and evaluators shall decide upon the appropriate assessment or assessments to measure students' attainment of learning targets.

3. LEAs may define consistent student learning targets across schools and classrooms for teachers with similar assignments.

D. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012), amended LR 38:2359 (September 2012).

**§307. Observation Tools**

A. ...

B. LEA observation tools shall adhere to the following minimum requirements.

1. The tool for teacher evaluation shall align to the *Louisiana Components of Effective Teaching*. The tool for administrator evaluation shall align to the *Performance Expectations and Indicators for Educational Leaders*, contained within *Bulletin 125—Standards for Educational Leaders in Louisiana*.

a. The *Louisiana Components of Effective Teaching* and the *Performance Expectations and Indicators for Educational Leaders* may be reviewed as needed by the department in collaboration with educators administering the evaluation system and appropriate third parties to determine the need for modifications and their continuing utility.

b. The board shall approve any changes made to the *Louisiana Components of Effective Teaching* and the *Performance Expectations and Indicators for Educational Leaders*.

2. Observation tools shall provide an overall score between 1.0 and 4.0. Total scores on observation tools may include tenths of points, indicated with a decimal point.

C. ...

D. LEAs which do not intend to use model observation tools developed or identified by the department shall submit proposed alternate tools to the department for evaluation and approval, LEAs shall submit proposed alternate observation tools to the department.

1. With the submission of proposed alternate observation tools, LEAs may request a waiver to use competencies and performance standards other than those provided in the *Louisiana Components of Effective Teaching* and the *Performance Expectations and Indicators for Educational Leaders*. Such requests shall include:

a. a justification for how the modified competencies and performance standards will support specific performance goals related to educator and student outcomes; and

b. an explanation of how the LEA will ensure the reliability and validity of the alternate observation tool intended to measure the modified competencies and performance standards.

2. The department may request revisions to proposed alternate observation tools to ensure their compliance with the minimum requirements set forth in this bulletin.

3. If requested, revisions to proposed alternate observation tools shall be submitted to the department by the LEA.

4. LEA-proposed alternate observation tools shall be either approved or denied by the department no later than August 1.

5. LEAs which secure department approval for use of an alternate observation tools need not submit them for approval in subsequent years, unless the alternate observation tools is revised, the *Louisiana Components of Effective Teaching or Performance Expectations and*

*Indicators for Educational Leaders* are revised, or revisions to this Section are approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1216 (May 2012), amended LR 38:2360 (September 2012).

**§309. Standards of Effectiveness**

A. Teachers and administrators shall receive a final composite score on annual evaluations to determine their effectiveness rating for that academic year.

1. The 50 percent of evaluations that is based on student growth will be represented by a sub-score between 1.0 and 4.0.

2. The 50 percent of evaluations that is based on a qualitative assessment of performance will also be represented by a sub-score between 1.0 and 4.0.

3. The final composite score for teachers and administrators shall be the average of the two sub-scores and shall be represented as a score between 1.0 and 4.0.

B. The composite score ranges defining *Ineffective*, *Effective (Emerging or Proficient)* and *Highly Effective* performance shall be as follows.

Effectiveness Rating	Composite Score Range
<i>Ineffective</i>	$x < 1.5$
<i>Effective: Emerging</i>	$1.5 \leq x < 2.5$
<i>Effective: Proficient</i>	$2.5 \leq x < 3.5$
<i>Highly Effective</i>	$3.5 \leq x$

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1217 (May 2012), amended LR 38:2360 (September 2012).

**§311. Evaluators**

A. - C. ...

D. All evaluators shall be certified to serve as evaluators, according to the minimum requirements provided by the department.

1. The department, its contractors, and LEAs with approved alternate observation tools shall serve as the sole certifiers of evaluators.

2. The evaluator certification process shall include an assessment to ensure inter-rater reliability and accuracy of ratings, based on the use of the teacher or leader observational rubric.

3. Evaluators on record must renew certification to evaluate annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1217 (May 2012), amended LR 38:2360 (September 2012).

**§319. Staff Development for Personnel Involved in Evaluation [Formerly §335]**

A. LEAs shall provide training on a continuing basis for all staff involved in the evaluation process (i.e., district level administrators and supervisors, principals and assistant principals, and other observers, and classroom teachers). It is

recommended that all training concentrate on fostering the elements listed below:

1. a positive, constructive attitude toward the teacher and administrator evaluation process;
2. a knowledge of state laws and LEA policies governing the evaluation process for teachers and administrators, along with the associated procedures for intensive assistance and due process;
3. an understanding of the *Louisiana Components of Effective Teaching* or an approved modified set of teacher competencies and performance standards;
4. an understanding of the *Performance Expectations and Indicators for Educational Leaders* or an approved modified set of leader competencies and performance standards;
5. an understanding of the measures of growth in student learning, as adopted by the board; and
6. an understanding of the process for calculating a composite score to determine final effectiveness ratings for teachers and administrators.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10, R.S. 17:3871-3873, R.S. 17:3881-3884, and R.S. 1309-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2252 (October 2010), amended LR 38:1219 (May 2012), LR 38:2360 (September 2012).

### §321. Evaluation Records Guidelines

A. Copies of evaluation results and any related documentation shall be retained by the LEA.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1219 (May 2012), amended LR 38:2361 (September 2012).

### §323. Job Descriptions [Formerly §339]

A. - B.4. ...

C. The following components shall be included in each job description developed:

1. position title;
  2. overview of position;
  3. position qualifications shall be at least the minimum requirements as stated in *Bulletin 746—Louisiana Standards for State Certification of School Personnel* (The qualifications shall be established for the position, rather than for the employee.);
  4. title of the person to whom the employee reports;
  5. performance standards, including statement on responsibility for growth in student learning;
  6. salary or hourly pay range;
  7. statement acknowledging receipt of job description;
- and
8. a space for the employee's signature and date.

NOTE: Job descriptions must be reviewed annually. Current signatures must be on file at the central office in the single official file to document the annual review and/or receipt of job descriptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.10, R.S. 17:3871-3873, R.S. 17:3881-3884, and R.S. 1309-3904.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2252 (October 2010), amended LR 38:1219 (May 2012), LR 38:2361 (September 2012).

### §325. Extenuating Circumstances

A. ...

B. Evaluation results shall be invalidated for any teacher or administrator with 60 or more excused absences in a given academic year, due to approved extended leave, such as maternity leave, military leave, extended sick leave, or sabbatical leave.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1220 (May 2012), amended LR 38:2361 (September 2012).

### Chapter 7. Reporting and Monitoring

#### §701. Annual Summary Reporting Format

A. Each LEA will submit an annual personnel evaluation report of the most recent academic year to the department by July 15. Information included in the reporting format reflects data deemed necessary in presenting annual reports to the department, as well as to the LEAs. The reporting of such information includes a variety of responses directed toward the collection of data useful to an analysis of the evaluation process from a statewide perspective. Items that are reported by the LEAs on forms provided by the department include, but are not limited to, the following items:

1. individual-level teacher evaluation results, by teacher;
2. the number of certified and other professional personnel, by categories, who were evaluated as performing ineffectively;
3. the number of certified and other professional personnel, by categories, who were terminated because of not having improved performance within the specified time allotment (Include the reasons for termination.);
4. the number of certified personnel, by categories, who improved (from ineffective to effective) as a result of the evaluation process (Report the data by distinguishing between personnel in position 0-3 years and personnel in position 4 or more years.);
5. the number of formal grievances filed as a result of ineffective performance ratings or disagreement with evaluation results; and
6. the number of evaluatees who received intensive assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:2253 (October 2010), amended LR 38:1220 (May 2012), LR 38:2361 (September 2012).

### Chapter 9. General Provisions

#### §901. Louisiana Components of Effective Teaching

A. The chart below contains the domains and components which represent the *Louisiana Components of Effective Teaching*.



Domain	Component
1. <i>Planning and Preparation</i>	1c. Setting Instructional Outcomes
2. <i>The Classroom Environment</i>	2c. Managing Classroom Procedures
3. <i>Instruction</i>	3b. Questioning and Discussion Techniques
	3c. Engaging Students in Learning
	3d. Using Assessment in Instruction

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 38:2361 (September 2012).

### §903. Appendix B

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, and R.S. 17:10.1.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 36:2256 (October 2010), amended LR 38:1221 (May 2012), repealed LR 38:2362 (September 2012).

### §905. Definitions

A. In order that consistency in terminology be maintained on a statewide basis, the department has established a list of terms and definitions. Careful consideration of each should be given during the training and implementation of personnel evaluation programs. The definitions below must be adopted by all LEAs. If additional terms are necessary in establishing a clear and concise understanding of evaluation procedures, they must be included in the LEA local personnel evaluation plan.

*Accountability*—shared responsibility for actions relating to the education of children.

*Administrator*—any person who serves in an academic leadership role at the school-level and is employed in a professional capacity other than a teacher. Principals, assistant principals, and academic deans shall be considered administrators according to this definition.

*Beginning Teacher*—any teacher in their first three years of the profession.

*Board*—state Board of Elementary and Secondary Education.

*Certified School Personnel*—those persons whose positions require certification.

*Charter School*—an independent public school that provides a program of elementary and/or secondary education established pursuant to and in accordance with the provisions of the Louisiana Charter School Law to provide a learning environment that will improve student achievement.

*Classroom Visitation*—an informal visit to a classroom of sufficient duration to monitor progress toward achievement of professional growth plan objectives and to provide support or assistance.

*Common Assessment*—a state-approved assessment to be used for measuring student growth in grades and subjects where value-added data is not available.

*Components of Effective Teaching*—the elements of teaching performance defined by the board in formal, recognized collaboration with educators and other stakeholders involved in education, to be critical to providing effective classroom instruction.

*Competencies*—skills, knowledge, and abilities required to demonstrate a particular level of performance.

*Criteria*—demonstrable levels of performance upon which a judgment may be based.

*Department*—Louisiana Department of Education.

*Due Process*—fair and impartial treatment, including notice and an opportunity to be heard.

*Duties*—those actions normally required of a position as assigned and/or described in the position description that are necessary to enable the class, school, or school district to accomplish its objectives.

*Educational Leader*—a person who is certified to serve in any school or district leadership capacity with the exception of superintendent.

*Evaluation*—process by which a local board monitors continuing performance of its teachers and administrators annually, by considering judgments concerning the professional accomplishments and competencies of a certified employee, as well as other professional personnel, based on a broad knowledge of the area of performance involved, the characteristics of the situation of the individual being evaluated, and the specific standards of performance pre-established for the position.

*Evaluated*—teacher or administrator undergoing evaluation.

*Evaluator*—one who evaluates; the school principal or assistant principal or respective supervisory level designees charged with evaluating teachers or the superintendent or other LEA-level supervisor charged with evaluating administrators.

*Formal Observation*—an announced observation of a teacher in which the evaluator observes the beginning, middle, and end of a lesson, that is preceded by a pre-observation conference and followed by a post-observation conference in which the teacher is provided feedback on his/her performance.

*Formal Site Visit*—an announced site visit by an administrator's evaluator, that is preceded by a pre-visit conference and followed by a post-visit conference in which the administrator is provided feedback on his/her performance.

*Grievance*—a procedure that provides a fair and objective resolution of complaint by an evaluatee that the evaluation is inaccurate due to evaluator bias, omission, or error.

*Informal Observation*—an observation of a teacher which provides evidence to be used in the evaluation process. Such observations may not last for the entirety of a lesson and may or may not be announced.

*Intensive Assistance Plan*—the plan that is implemented when it is determined, through the evaluation process, that personnel have not meet the standards of effectiveness. This plan includes the specific steps the teacher or administrator shall take to improve; the assistance, support, and resources to be provided by the LEA; an expected timeline for achieving the objectives and the procedure for monitoring progress, including observations and conferences; and the action to be taken if improvement is not demonstrated.

*Job Description*—a competency-based summary of the position title, qualification, supervisor, supervisory responsibilities, duties, job tasks, and standard performance criteria, including improving student achievement, that

specify the level of job skill required. Space shall be provided for signature and date.

*Local Board*—governing authority of the local education agency, parish/city school or local school system.

*Local Education Agency (LEA)*—city, parish, or other local public school system, including charter schools.

*Non-Tested Grades and Subjects (NTGS)*—grades and subjects for which a value-added score is not available for teachers or other certified personnel.

*Objective*—a devised accomplishment that can be verified within a given time, under specifiable conditions, and by evidence of achievement.

*Observation*—the process of gathering facts, noting occurrences, and documenting evidence of performance.

*Observer*—one who gathers evidence to be used in the evaluation process through the observation of educator performance.

*Performance Expectations*—the elements of effective leadership approved by the board that shall be included as evaluation criteria for all building-level administrators.

*Performance Standards*—the behaviors and actions upon which performance is evaluated.

*Post-Observation Conference*—a discussion between the evaluatee and evaluator for the purpose of reviewing an observation and sharing commendations, insights, and recommendations for improvement.

*Pre-Observation Conference*—a discussion between the evaluatee and the evaluator which occurs prior to a formal observation; the purposes are to share information about the lesson to be observed and to clarify questions that may occur after reviewing of the lesson plan.

*Professional Growth Plan*—a written plan developed to enhance the skills and performance of an evaluatee. The plan includes specific goal(s), objective(s), action plans, timelines, opportunities for reflection, and evaluation criteria.

*Self-Evaluation/Self-Reflection*—the process of making considered judgments of one's own performance concerning professional accomplishments and competencies as a certified employee or other professional person based upon personal knowledge of the area of performance involved, the characteristics of the given situation, and the specific standards for performance pre-established for the position; to be submitted by the evaluatee to the appropriate evaluator for use in the compilation of the individual's evaluation.

*Standard Certificate*—a credential issued by the state to an individual who has met all requirements for full certification as a teacher.

*Standard of Effectiveness*—adopted by the State Board of Elementary and Secondary Education as the final composite score required for teacher or administrator performance to be considered *Effective*.

*Student Learning Target*—a goal which expresses an expectation of growth in student achievement over a given period of time, as measured by an identified assessment and/or body of evidence.

*Teacher*—any person who provides direct instruction or direct instructional support to students, to whom he/she has been formally assigned. Classroom teachers, special education teachers, librarians, and guidance counselors shall be considered teachers according to this definition.

*Teachers of Record*—educators who are responsible for a portion of a student's learning outcomes within a subject/course.

*Value-Added*—the use of prior achievement history and appropriate demographic variables to estimate typical achievement outcomes through a statistical model for students in specific content domains based on a longitudinal data set derived from students who take state-mandated tests in Louisiana for the purpose of comparing typical and actual achievement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:391.10, R.S. 17:3881-3886, and R.S. 17:3901-3904, R.S. 17:3997, R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:1222 (May 2012), amended LR 38:2362 (September 2012).

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Executive Director

1209#021

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Advanced Placement and International Baccalaureate (LAC 28: CXV.2325)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2325. Advanced Placement and International Baccalaureate. The revision increases the number of advanced placement (AP) or international baccalaureate (IB) courses available to students at each public high school. The number of courses increases by one each year from 2012-2013 to 2015-2016. Increasing the number of advanced placement and international baccalaureate courses at each school will provide students with more opportunities to take rigorous courses that have been shown to increase students' chances of succeeding in college.

## Title 28 EDUCATION

### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 23. Curriculum and Instruction §2325. Advanced Placement and International Baccalaureate

A. Each high school shall provide students access to advanced placement (AP) or international baccalaureate (IB) courses according to the schedule below:

1. at least one AP or IB course in each of two core content areas during the 2012-2013 school year;
2. at least one AP or IB course in each of three core content areas during the 2013-2014 school year;
3. at least one AP or IB course in each of four core content areas during the 2014-2015 school year;
4. at least one AP or IB course in each of four core content areas and one additional AP or IB course during the 2015-2016 school year.

B. - B.2.a. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37: 3198 (November 2011), LR 38:759 (March 2012), LR 38:2363 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#022

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Foreign Languages (LAC 28:CXV.2345)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2345. Foreign Languages. The revision adds American Sign Language III and IV to the foreign language program of study. This revision allows students who have taken ASL I and II continue their study and receive credit toward graduation.

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 23. Curriculum and Instruction  
§2345. Foreign Languages**

A. The foreign language course offerings shall be as follows.

Course Title(s)	Units
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
American Sign Language I, II, III, IV	1 each
Greek I, II, III, IV	1 each
Chinese I, II, III, IV	1 each

B. Teachers of American sign language shall have a valid Louisiana teaching certificate and documentation of the following:

1. provisional level certification from the American Sign Language Teachers Association (ASLTA); or
2. certificate of interpretation (CI) from the Registry of Interpreters of the Deaf (RID); or
3. certificate of transliteration (CT) from the RID; or
4. certified deaf interpreter certification (CDI) from the RID; or
5. level IV or V certificate of competence from the National Association of the Deaf (NAD); or
6. level IV or V official documentation of the videotaped version of the educational interpreter performance assessment (EIPA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7, R.S. 17:24.4, R.S. 273, and R.S. 17:284.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1295 (June 2005), amended LR 36:1996 (September 2010), LR 38:2364 (September 2012).

Catherine R. Pozniak  
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1209#023

**RULE**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School Administrators—Technology Education (LAC 28:CXV.2385)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2385. Technology Education. This action sets forth policy listing state-recognized technology education course offerings within the CTE program. The four course offerings provide specific instruction and training to students interested in pursuing careers in manufacturing. These courses cover content which lead to industry-recognized credentialing as a certified manufacturing specialist.

**Title 28  
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 23. Curriculum and Instruction  
§2385. Technology Education**

A. Technology education (formerly industrial arts) course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Advanced Electricity/Electronics	10-12	1
Advanced Metal Technology	10-12	1
Advanced Wood Technology	10-12	1
Aerospace Engineering	11-12	1
Automation in Manufacturing	10-12	1
Basic Electricity/Electronics	9-12	1
Basic Metal Technology	9-12	1
Basic Wood Technology	9-12	1
Civil Engineering and Architecture	11-12	1
Communication/Middle School	6-8	-
Communication Technology	9-12	1
Computer Integrated Manufacturing	11-12	1
Construction/Middle School	6-8	-
Construction Technology	10-12	1
Cooperative Technology Education	10-12	3
Digital Electronics	9-10	1
Energy, Power, and Transportation Technology	9-12	1
Engineering Design I, II	11-12	1
Engineering Design and Development	11-12	1
General Technology Education	9-12	1
Introduction to Engineering Design	8-12	1

Course Title(s)	Recommended Grade Level	Units
Manufacturing Process and Team Building	9-12	1
Manufacturing Technology	9-12	1
Manufacturing Technology/Middle School	6-8	-
Manufacturing Tools and Equipment	10-12	1
Marine Engineering	11-12	0.5
Materials and Processes	10-12	1
Modular Technology/Middle School	6-8	-
Oil and Gas Production Operations	11-12	1
Physics of Technology I	10-12	1
Physics of Technology II	11-12	1
Power Mechanics	9-12	1
Principles of Engineering	9-10	1
T2 Safety Systems for Oil and Gas Production	11-12	1
Technology Education Computer Applications	9-12	1
Technology Education Elective I, II	9-12	1/2-3
Transportation Technology/Middle School	6-8	-
Welding Technology	10-12	1
Industry-Based Certifications		
Advanced Technical Drafting	10-12	1
Architectural Drafting	10-12	1
Basic Technical Drafting	9-12	1
Introduction to Fabrication P-Tech and Manufacturing	10-12	1
NCCER Carpentry I, II TE	11-12	1-3
NCCER Electrical I, II TE	11-12	1-3
NCCER Industrial Maintenance	11-12	1-3
NCCER Instrumentation Control Mechanic I, II	11-12	1-3
NCCER Insulating	11-12	1-3
NCCER Pipe Fitter I, II TE	11-12	1-3
NCCER Welding Technology I, II TE	11-12	1-3
Process Technician I, II	11-12	1
T2 Safety Systems for Oil and Gas Production	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 35:1229 (July 2009), LR 35:2323 (November 2009), LR 35:2747 (December 2009), LR 36:1997 (September 2010), LR 38:2364 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#024

## RULE

### Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Textbooks (LAC 28: CXV.1703)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §1703. Textbooks. The revision removes the restriction that districts can only use 10 percent of their textbook budget on textbooks that are not on the state adoption list. The revision also clarifies the time

required to order books in alternate formats in order to receive them before school begins. The revision allows districts more flexibility in the purchase of textbooks and instructional materials.

## Title 28

### EDUCATION

#### Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

#### Chapter 17. Instructional Support

#### §1703. Textbooks

A. Each school shall provide textbook materials for each student and shall have proper procedures for selection, storage, and preservation of textbooks.

B. In order to ensure the timely delivery of new instructional materials in the appropriate format (e.g., print, large print, Braille, audio, digital) for all students, each LEA shall place its instructional materials order at least six months in advance of the school year. Refer to *Bulletin 1794—State Textbook Adoption Policy and Procedure Manual* (LAC 28:XXXIII).

C. State funds appropriated through the MFP may be used to buy books on the state-adopted textbook lists and academically related ancillary materials or computer hardware according to the state guidelines.

1. The annual appropriation for the purchase of instructional materials and supplies (state approved textbooks) is defined in the MFP appropriation bill on a per-pupil amount. In order to facilitate the purchase and receipt of these textbooks each year, LEAs are required to submit state textbook orders to the Publisher's Depository, centrally located within the state, between March 15 and May 15.

2. LEAs may use state textbook dollars for the purchase of non-adopted instructional materials.

D. Refer to §711 for more policies related to textbooks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:8 and R.S. 17:351 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1286 (June 2005), amended LR 37:1141 (April 2011), LR 38:2365 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#025

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—CTTIE-1 and CTTIE-2 Certificates (LAC 28:CXXXI.505)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §505. CTTIE-1 and CTTIE-2 Certificates. The policy revision allows candidates that served as athletic trainer graduate assistants while pursuing master's degrees in athletic training to count those graduate assistant hours towards the two-year requirement for the CTTIE certificate in sports medicine. Currently, there are questions whether the hours worked as a graduate assistant pursuing a master's degree in athletic

training should be counted as work hours required to complete a CTTIE. The approval clarifies this grey area as well as allows consistency in the review process.

## Title 28

### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 5. Standards for Secondary Career and Technical Trade and Industrial Education Personnel

##### §505. CTTIE-1 and CTTIE-2 Certificates

A. - E.1. ...

F. Other Health Professions/Related Fields Instructor (e.g., Dental Assistant, Sports Medicine)—Eligibility Requirements

1. Applicant must be a graduate of an approved program in the area to be taught, with current state license or national certification where required. Nutrition instructors in nursing programs may meet certification requirements with a degree in family and consumer sciences and a minimum of 12 semester hours in foods and nutrition.

2. Applicant must have a minimum of two years of occupational experience in the area in which he/she is to teach. One year of this experience must have been served within the last five years.

3. Sports medicine instructors shall have at least a Bachelor of Science degree and have received and maintained a current state and/or national certification as an athletic trainer and meet all CTTIE requirements.

a. Applicants pursuing a master's degree in athletic training that are working as an athletic trainer graduate assistant at a regionally accredited university may count these work experience hours toward meeting the required work hours for the CTTIE application. CTTIE application must include a letter from the director of athletics at the university with the actual number of hours worked as well as assigned duties.

G. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1813 (October 2006), amended LR 35:2752 (December 2009), LR 36:2843 (December 2010), LR 38:2366 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#026

## RULE

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—School Nurse (LAC 28:CXXXI.411)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §411. School

Nurse. The policy revision allows the renewal of a type B or type A school nurse certificate by the submission of a copy of his/her current Louisiana licensure to serve as a registered nurse and a request from a Louisiana employing school system to renew his/her certificate. The policy removes the requirement of submitting verification of continuing learning units for the renewal of the school nurse certificate. The continuing learning units must be submitted to the Louisiana State Board of Nursing for the renewal of the RN license so those documents remain on file with the state Board of Nursing office.

## Title 28

### EDUCATION

#### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 4. Ancillary School Service Certificates Subchapter A. General Ancillary School Certificates

##### §411. School Nurse

A. Type C School Nurse—valid for three years.

1. Eligibility requirements:

a. current Louisiana licensure as a registered professional nurse; and

b. minimum of two years experience as a registered nurse.

2. Renewal Guidelines. May be renewed once for a three year period, upon presentation of a copy of current Louisiana licensure as a registered professional nurse and upon request of Louisiana employing authority.

B. Type B School Nurse—valid for five years.

1. Eligibility requirements:

a. current Louisiana licensure as a registered professional nurse; and

b. three years of experience as a Type C school nurse.

2. Renewal Guidelines. May be renewed once for a five year period, upon presentation of a copy of current Louisiana licensure as a registered professional nurse and upon request of Louisiana employing authority.

C. Type A School Nurse—valid for five years.

1. Eligibility requirements:

a. current Louisiana licensure as a registered professional nurse;

b. baccalaureate degree in nursing or a health-related field from a regionally accredited college or university; and

c. five years experience as a certified Type B school nurse.

2. Renewal Guidelines. May be renewed once for a five year period, upon presentation of a copy of current Louisiana licensure as a registered professional nurse and upon request of Louisiana employing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; and R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1808 (October 2006), amended LR 38:2366 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#027

## RULE

### Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act (LAC 28:XLIII.508, 511, 512, 513, 514, 516, 518, 532, 904, and 905)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*, Subpart I. Regulations for Students with Disabilities: §508. Due Process Hearing Request, §511. Impartial Due Process Hearing and Hearing Officer Appointments, §512. Hearing Rights, §513. Hearing Decisions, §514. Finality of Decision; Appeal; and Compliance with Hearing Decisions, §516. Civil Action, §518. Student Status During Proceedings, §532. Appeal, §904. Abbreviations/Acronyms used in these Regulations; and §905. Definitions. The Rule was developed in response to Act 683 of the 2010 Regular Session of the Louisiana Legislature. The Act requires the state Board of Elementary and Secondary Education to approve rules related to the administration of special education due process hearings required under the Louisiana Education of Students with Exceptionalities Act. Act 683 requires the Department of Education to contract with the Division of Administrative Law to conduct those hearings. Previously, the Department of Education contracted with independent hearing officers to handle the due process hearings.

#### Title 28

#### EDUCATION

#### Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

#### Subpart I. Regulations for Students with Disabilities

#### Chapter 5. Procedural Safeguards

#### Subchapter A. Due Process Procedures for Parents and Students

#### §508. Due Process Hearing Request

A. - A.2. ...

3. When the LDE receives a written request for due process hearing, the LDE will provide a copy of the request to the other party. The date on which the LDE confirms that the other party has received the request will be the presumptive date of receipt.

4. Within two business days of receipt of a written request, the LDE shall transmit the request for due process hearing to the Division of Administrative Law, who shall docket the request and assign a hearing officer.

B. - D.1. ...

2. Within five days of receipt of notification under Paragraph D.1 of this Section, the hearing officer shall make a determination on the face of the written request for due process hearing, whether the due process hearing request meets the requirements of Subsection B of this Section, and shall immediately notify the parties and LDE in writing of that determination. If a determination of insufficiency is made, such determination shall include the nature of the insufficiency and may result in dismissal of the due process hearing.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2071 (October 2008), amended LR 38:2367 (September 2012).

#### §511. Impartial Due Process Hearing and Hearing Officer Appointments

A. ...

B. Agency Responsible for Conducting the Due Process Hearing. The due process hearing described in Subsection A of this Section shall be conducted in accordance with the law.

C. Impartial Hearing Officer. The DAL shall designate hearing officers, who:

1. - 2.b. ...

c. have represented an LEA or a parent as an attorney in education litigation within the previous three years;

3. ...

4. the DAL shall maintain a list of administrative law judges qualified to conduct impartial due process hearings. The list shall include a statement of the qualifications of each of the hearing officers; and

5. the LDE and DAL shall ensure that impartial due process hearing officers designated pursuant to this Section have successfully completed a training program approved by the LDE. Additional training shall be required by the LDE whenever warranted by changes in applicable legal standards or educational practices or as determined necessary by the LDE.

D. - D.1. ...

2. The DAL shall review any written challenge to the impartiality of the hearing officer and provide a written decision and notice to the parent and LEA within three business days after receipt of the written challenge.

3. If the DAL determines that doubt exists as to whether the proposed hearing officer is truly impartial, another hearing officer shall be immediately assigned.

E. - H.3. ...

I. Prehearing Conference. The hearing officer shall hold a prehearing conference. The hearing officer must initiate the prehearing conference, which may be conducted in person at a location within the school district or by telephone. At the prehearing conference, the hearing officer shall:

1. identify the questions that must be answered to resolve the dispute and eliminate claims and complaints that are without merit;

2. provide the self-represented litigant with a detailed explanation of trial procedures, burden of proof, elements of the claim, and remedies;

3. set up a scheduling order for the hearing and additional prehearing activities;

4. determine if the hearing can be disposed of without an evidentiary hearing and, if so, establish the schedule and procedure for doing so; and

5. establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition. The determination of the location of the hearing should not impose additional costs on any party.

J. Burden of Proof. The burden of proof at a due process hearing is on the party seeking relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2072 (October 2008), amended LR 38:2367 (September 2012).

### **§512. Hearing Rights**

A. - B. ...

1. At least five business days prior to a hearing conducted pursuant to §511.A, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

B.2. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2073 (October 2008), amended LR 36: 1502 (July 2010), LR 38:2368 (September 2012).

### **§513. Hearing Decisions**

A. - C. ...

1. transmit the findings and decisions referred to in §512.A.5 to the state advisory panel established under §167; and

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2073 (October 2008), amended LR 38:2368 (September 2012).

### **§514. Finality of Decision; Appeal; and Compliance with Hearing Decisions**

A. Finality of Hearing Decision. A decision made in a hearing conducted pursuant to §§507-513 or §§530-534 is final, except that any party involved in the hearing may appeal the decision under the provisions of §516.

B. - B.1.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008), amended LR 38:2368 (September 2012).

### **§516. Civil Action**

A. General. Any party aggrieved by the findings and decision made under §§507-513 or §§530-534 has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under §507 or §§530-532. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2074 (October 2008), amended LR 38:2368 (September 2012).

### **§518. Student Status during Proceedings**

A. - C. ...

D. If the hearing officer in a due process hearing conducted pursuant to §§507-513 or §§530-534 agrees with the student's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the state and the parents for the purposes of Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2075 (October 2008), amended LR 38:2368 (September 2012).

### **Subchapter B. Discipline Procedures for Students with Disabilities**

#### **§532. Appeal**

A. General. The parent of a student with a disability who disagrees with any decision regarding placement under §§530 and 531, or the manifestation determination under §530.E, or an LEA that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing pursuant to §§507 and 508.A and B.

B. - C. ...

1. Whenever a hearing is requested under paragraph A of this section, the parents or the LEA involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements of §§507, 508.A-C, and 510-514, except as provided in Paragraphs C.2 through 4 of this Section.

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2078 (October 2008), amended LR 38:2368 (September 2012).

### **Chapter 9. General**

#### **Subchapter B. Definitions used in these Regulations**

#### **§904. Abbreviations/Acronyms used in these Regulations**

*ALJ*—administrative law judge.  
\* \* \*

*DAL*—Division of Administrative Law.  
\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2089 (October 2008), amended LR 38:2368 (September 2012).

#### **§905. Definitions**

*Administrative Law Judge*—an employee of the Division of Administrative Law that has the qualifications and authority as listed in R.S. 49:994.  
\* \* \*

*Division of Administrative Law*—the independent state agency that conducts administrative hearings and renders decisions regarding state and federal law.  
\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2089 (October 2008), amended LR 36:1505 (July 2010), LR 38:2368 (September 2012).

Catherine R. Pozniak  
Executive Director

1209#028

**RULE**

**Office of the Governor  
Board of River Port Pilot Commissioners  
for the Port of New Orleans**

River Port Pilots  
(LAC 46:LXX.3103, 3205, 3207, 3209, and 3301)

In accordance with the Administrative Procedures Act R.S. 49:950 et seq. and R.S. 34:991(B)(3), the Board of River Port Pilot Commissioners hereby amends and reenacts LAC 46:LXX.Chapters 31 to 36.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXX. River Pilots**

**Subpart 2. Board of River Port Pilot Commissioners**

**Chapter 31. General Provisions**

**§3103. Definitions**

A. ...

\* \* \*

*Apprentice Duties*—any activity or requirement of the apprenticeship program as required by the commission.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2068 (October 2003), amended LR 35:1882 (September 2009), LR 38:2369 (September 2012).

**Chapter 32. Licensing, Qualifications, and  
Apprenticeship**

**§3205. Education Qualifications**

A. In addition to the requirements described herein, the Applicant must have a bachelor's degree or diploma granted by a college or university accredited by one of the six regional accreditation agencies recognized by the United States Department of Education for the accreditation of degree-granting institutions of higher education.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2069 (October 2003), amended LR 35:1833 (September 2009), LR 38:2369 (September 2012).

**§3207. Physical Qualifications**

A. - B. ...

C. The applicants shall submit to drug and alcohol screening including hair test and expanded drug screen panels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1883 (September 2009), LR 38:2369 (September 2012).

**§3209. Apprenticeship**

A. The apprentice must serve a minimum of 12 months of apprenticeship in his proposed calling, handling deep draft vessel over the operating territory of the pilots under the tutelage of not less than 50 percent of the pilots. The apprentice must perform the duties of an apprentice in a

professional, courteous and prudent fashion. At all times the apprentice must be fit for duty, free from any substance that may adversely affect the apprentice's ability to perform apprentice duties. The apprentice must set forth in detail the names of the vessels handled, dates handled, draft, tonnage, between what points so moved, and the names of the supervising pilots. No apprentice shall be permitted to be examined for commissioning who has not fulfilled the requirements set forth by the board. The apprenticeship work must be certified by the board during the apprenticeship program. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips, extended the apprenticeship, or terminate the apprenticeship, when deemed necessary.

B. - C. ...

D. Should the apprentice fail the examination, violate any rule or regulation of the board, fail to fulfill the duties of an apprentice or engage in any conduct or activity that is unsafe, unprofessional and/or demonstrates a lack of judgment the board, in its discretion, may terminate the apprenticeship, or may designate additional apprenticeship requirements to be satisfied by the apprentice before he may again petition the board for examination.

E. ...

F. The apprentice shall submit to drug and alcohol screening as determined by the board in its discretion.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1883 (September 2009), LR 38:2369 (September 2012).

**Chapter 33. Deputy Pilots**

**§3301. Restricted Duties Guidelines**

A. The deputy pilots shall adhere to the following guidelines and restrictions. The failure to strictly adhere to these guidelines may subject the deputy pilot to disciplinary action at the board's discretion. The guidelines are divided into two tiers.

1. Tier one shall commence immediately after the deputy pilot is commissioned. The deputy pilot shall pilot:

- a. vessels of 650 feet in length or less;
- b. a minimum of 70 vessel;
- d. for a period of not less than 180 calendar days.

2. Tier two shall commence upon the completion of tier one. The deputy pilot shall pilot:

- a. vessels of 800 feet in length or less;
- b. a minimum of 70 vessels;
- d. for a period of not less than 180 calendar days.

B. During each tier, the deputy pilot must set forth a report providing the name of the vessel piloted, the date and time the vessel was piloted, the length, draft, tonnage of the vessel piloted, the route of the vessel piloted.

C. A deputy pilot shall be prohibited from:

- 1. piloting passenger vessels regardless of draft, tonnage or length;
- 2. piloting tank vessels including OBO's (oil/bulk/ore);
- 3. standing watch at the vessel traffic center;
- 4. yachts;
- 5. military vessels.



D. After a deputy pilot has completed each tier, the board shall evaluate the deputy pilot's ability and competence to handle the above classes of vessels. Upon such examination, the board shall determine whether, and if so, for what time period, the deputy pilot shall continue to be subject to any or all of the restrictions. The board reserves the right to substitute work requirements, require satisfactory completion of additional trips or extend the deputy pilot's restrictions when deemed necessary.

E. No persons are allowed on the bridge with the deputy pilot with the exception of the bridge team, U.S. Coast Guard representatives, government officials, the vessel's crew, or a commissioner or a designee of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:991(B)(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of River Port Pilot Commissioners, LR 29:2070 (October 2003), amended LR 35:1884 (September 2009), LR 38:2369 (September 2012).

Michael Delesdernier  
General Counsel

1209#002

## **RULE**

### **Department of Health and Hospitals Bureau of Health Services Financing**

#### **CommunityCARE Program Termination (LAC 50:I.Chapter 29)**

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed LAC 50:I.Chapter 29 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### **Title 50**

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

##### **Part I. Administration**

##### **Subpart 3. Medicaid Coordinated Care**

##### **Chapter 29. CommunityCARE**

##### **§2901. Introduction**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2903. Recipient Participation**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), amended LR 32:1901 (October 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2905. Provider Selection**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) 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 17:788 (August 1991), amended LR 19:645 (May 1993), LR 27:547 (April 2001), promulgated for LAC-LR 29:909 (June 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2907. Provider Qualifications**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:32:405 (March 2006), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2909. Emergency Services**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) 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 17:788 (August 1991), amended LR 19:645 (May 1993), LR 25:669 (April 1999), promulgated for LAC-LR 29:909 (June 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2911. PCP Referral/Authorization**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:405 (March 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:338 (January 2011), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2913. Physician Management**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) 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 17:788 (August 1991), amended LR 19:645 (May 1993), LR 23:201. (February 1997) promulgated for LAC inclusion, LR 29:910 (June 2003), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

##### **§2915. Immunization Pay-for-Performance**

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1139 (June 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2279 (October 2010), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2370 (September 2012).

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.

Bruce D. Greenstein  
Secretary

1209#059

## RULE

### Department of Health and Hospitals Bureau of Health Services Financing

#### Early and Periodic Screening, Diagnosis and Treatment Substance Abuse Services (LAC 50:XV.Chapter 93)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XV.Chapter 93 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XV. Services for Special Populations

#### Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

#### Chapter 93. Substance Abuse Services

#### §9301. General Provisions

A. The Medicaid Program shall provide coverage of substance abuse services rendered to Medicaid eligible recipients, under the age of 21.

B. Medicaid reimbursement for medically necessary substance abuse services shall only be provided to the Office of Behavioral Health for recipients under the age of 21 who receive outpatient treatment only. The Medicaid Program shall not provide reimbursement for inpatient services under these provisions.

C. Substance abuse services covered under the EPSDT Program shall include medically necessary clinic services and other medically necessary substance abuse services rendered to EPSDT recipients.

D. Medicaid recipients shall be the sole recipients of Medicaid covered substance abuse services and these services shall only be billed for the Medicaid recipient despite the presence of others who may be group or family participants.

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 38:2371 (September 2012).

#### §9303. Covered Services

A. The medical necessity for these rehabilitative services must be determined by, and services recommended by, a licensed mental health practitioner, or as ordered by a staff physician.

#### B. Outpatient Treatment Program

1. Professionally directed assessment, diagnosis, treatment, and recovery services are provided in an organized non-residential treatment setting by licensed

mental health practitioners (LMHPs) and non-licensed professionals under the supervision of a LMHP.

2. Outpatient treatment program hours range from one hour to nine hours/week. The maximum level of hours may be exceeded based on medical necessity.

3. Outpatient treatment program services include, but are not limited to:

- a. individual, group, and family counseling;
- b. medication compliance;
- c. relapse prevention; and
- d. disease concept.

4. Outpatient treatment program services offer comprehensive, coordinated, and defined services that may vary in level of intensity.

#### C. Intensive Outpatient Treatment Program

1. Professionally directed assessment, diagnosis, treatment, and recovery services are provided in an organized non-residential treatment setting by LMHPs and non-licensed professionals under the supervision of a LMHP.

2. Adolescents in intensive outpatient treatment programs receive a minimum of six hours/week with no specified frequency/week. The maximum is up to 20 hours/week. The maximum level of hours may be exceeded based on medical necessity.

3. Intensive outpatient treatment program services include, but are not limited to:

- a. individual, group, and family counseling; and
- b. education on recovery.

4. Intensive outpatient treatment program services offer comprehensive, coordinated, and defined services that may vary in level of intensity.

5. These services consist of a scheduled series of face-to-face sessions appropriate to the individual's plan of care.

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 38:2371 (September 2012).

#### §9305. Provider Qualifications

A. Outpatient clinical services shall be provided by Louisiana licensed mental health practitioners within the scope of the State Practice Act and licensing requirements.

B. A mental health practitioner may include a:

1. licensed professional counselor (LPC);
2. licensed clinical social worker (LCSW);
3. licensed addiction counselor (LAC); and
4. licensed marriage and family therapist (LMFT).

C. The following practitioners are also approved service providers:

1. licensed medical doctor;
2. licensed psychologist;
3. licensed nurse practitioner (NP);
4. advanced practice registered nurse (APRN); and
5. registered nurse (RN) with documented evidence of receiving a minimum of five continuing education units (CEUs) annually that are specifically related to behavioral health and medication management issues.

D. Registered addiction counselors (RACs) and certified addiction counselors (CACs) may also provide clinical services with a licensed mental health practitioner on-site.

E. RACs shall meet the following qualifications:

1. is at least 21 years of age;

2. is a legal resident of the United States;  
3. is not in violation of any ethical standards subscribed to by the Addictive Disorders Regulatory Authority (ADRA);

4. has not been convicted of a felony;  
a. The ADRA in its discretion may waive this requirement upon review of the individual's circumstances;

5. has successfully completed 270 clock hours of education approved by the ADRA. One semester hour equals 15 clock hours. One CEU equals 10 clock hours. One hundred eighty of these hours must be specific to addiction treatment. The remaining 90 hours may be related, but are subject to approval by the ADRA. Six of the 90 hours must be in professional ethics;

6. has successfully completed 6,000 hours (three years) of supervised work experience in the treatment of people with addictive disorders. Of these hours, he/she must complete a 300 hour practicum in the core functions and global criteria, with at least twenty 20 hours in each core function. This experience must be supervised by a certified clinical supervisor (CCS) or other qualified professional who has received the proper waiver from the ADRA;

7. has completed and received approval for an application prescribed by the ADRA; and

8. demonstrates competency in addiction counseling by submitting and gaining approval for a typical case study and passing a written examination prescribed by the ADRA.

F. CACs shall meet the following qualifications:

1. is at least 21 years of age and holds a bachelor's degree from an approved and accredited institution of higher education in a human services field;

2. is a legal resident of the United States;

3. is not in violation of any ethical standards subscribed to by the ADRA;

4. has not been convicted of a felony;

a. the ADRA in its discretion may waive this requirement upon review of the individual's circumstances;

5. has successfully completed two hundred seventy clock hours of education approved by the ADRA. One semester hour equals fifteen clock hours. One CEU equals ten clock hours. One hundred eighty of these hours must be specific to addiction treatment. The remaining ninety hours may be related, but are subject to approval by the ADRA. Six of the ninety hours must be in professional ethics;

6. has successfully completed 4,000 hours (two years) of supervised work experience in the treatment of people with addictive disorders. Of these hours, he/she must complete a 300 hour practicum in the core functions and global criteria, with at least 20 hours in each core function. This experience must be supervised by a CCS or other qualified professional who has received the proper waiver from the ADRA;

7. has completed and received approval for an application prescribed by the ADRA; and

8. demonstrates competency in addiction counseling by submitting and gaining approval for a typical case study and passing a written examination prescribed by the ADRA.

G. A registered addiction counselor or a certified addiction counselor may not practice independently and may

not render a diagnostic impression, but can practice under the supervision of an LMHP on-site within an agency that is licensed or accredited.

H. Unlicensed practitioners shall only practice under the supervision of a licensed professional, within the scope of the licensed professional's State Practice Act and licensing 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 and Hospitals, Bureau of Health Services Financing, LR 38:2371 (September 2012).

### **§9307. Reimbursement Methodology**

A. The Medicaid Program shall provide reimbursement to the Office of Behavioral Health for substance abuse services rendered to EPSDT recipients. Under the provisions of this Rule, payments to OBH for these services shall sunset as of February 29, 2012.

B. Reimbursement for these services shall be based on the most recent actual cost to OBH. Cost data shall be derived from the department's ISIS reporting of costs for the period. The cost period shall be consistent with the state fiscal year. Costs are determined by selecting the expenditures paid from state and local funds for the state fiscal year.

C. OBH encounter data from their database shall be used to identify allowable services. Encounter data for recipients under the age of 21 shall be extracted and used in calculations to determine actual cost to OBH.

D. Costs shall be calculated by using the cost-weighted amount and include Medicaid eligibles under 21 database costs divided by total database costs times OBH's expenditures for the program which were derived from the state's ISIS data.

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 38:2372 (September 2012).

Bruce D. Greenstein  
Secretary

1209#060

### **RULE**

#### **Department of Health and Hospitals Bureau of Health Services Financing**

Licensing Standards for Adult Day Health Care  
(LAC 48:I.4203, 4207, 4227, 4245, and 4267)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.4203, §4207, §4227, §4245, and §4267 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.41-2120.46, and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

**Title 48  
PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 42. Adult Day Health Care**

**Subchapter A. General Provisions**

**§4203. Definitions**

\* \* \*

*Direct Service Worker*—an unlicensed staff person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the participant.

*Director*—the person designated by the governing body of the ADHC to:

1. manage the center;
2. insure that all services provided are consistent with accepted standards of practice; and
3. ensure that center policies are executed.

\* \* \*

*Full Time Equivalent*—40 hours of employment per week or the number of hours the center is open per week, whichever is less.

\* \* \*

*Key Staff*—the designated program manager(s), social worker(s) or social services designee(s), and nurse(s) employed by the ADHC. A key staff person may also serve as the ADHC director.

\* \* \*

*Program Manager*—a designated staff person, who is responsible for carrying out the center's individualized program for each participant.

\* \* \*

*Social Service Designee/Social Worker*—an individual responsible for arranging medical and/or social services needed by the participant.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008), repromulgated LR 34:2622 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012).

**§4207. Initial License Application Process**

A. - A.6. ...

a. line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000; and

b. general and professional liability insurance of at least \$300,000.

c. Repealed.

A.7. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR 34:2624 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012).

**Subchapter B. Administration and Organization**

**§4227. Policy and Procedures**

A. - B.9. ...

C. The director, or his designee:

1. is responsible for the execution of ADHC center policies; and

2. shall be accessible to center staff or to any representative of the Department of Health and Hospitals conducting an audit, survey, monitoring activity, or research and quality assurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008), repromulgated LR 34:2628 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012).

**Subchapter D. ADHC Center Services**

**§4245. Transportation Requirements**

A. - G. ...

H. Centers are expected to provide transportation to any client within their licensed region, but no client, regardless of their region of origin, may be in transport for more than one hour on any single trip.

1. If the center develops a policy that establishes a limited mileage radius for transporting participants, that policy must be submitted to DHH for review and approval prior to the center being allowed to limit transportation for participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008), repromulgated LR 34:2631 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012).

**Subchapter G. Center Responsibilities**

**§4267. Staffing Requirements**

A. Staff at ADHC centers shall meet the following education and experience requirements. All college degrees must be from a nationally accredited institution of higher education as defined in §102(b) of the Higher Education Act of 1965 as amended. The following "key" staff positions are required and subject to the provisions listed below.

1. Social Service Designee/Social Worker. The center shall designate at least one staff person who shall be employed at least 10 hours a week to serve as the social services designee or social worker.

a. The social services designee shall have, at a minimum, a bachelor's degree in a human service-related field such as psychology, sociology, education, or counseling. Two years of experience in a human service-related field may be substituted for each year of college.

b. The social worker shall have a bachelor's or master's degree in social work.

2. Nurse. The center shall employ one or more LPNs or RNs who shall be available to provide medical care and supervision services as required by all participants. The RN or LPN shall be on the premises daily for at least eight hours, the number of hours the center is open, or during the

time participants are present at the center, whichever is least. Nurses shall have a current Louisiana state license.

a. - b. Repealed.

3. Program Manager. The center shall designate at least one staff member who shall be employed at least 10 hours a week to be responsible for carrying out the center's individualized program for each participant. The program manager should have program planning skills, good organization abilities, counseling and activity programming experience.

3.a. - 7.e. Repealed.

B. The following additional staff positions are required, subject to the provisions listed below.

1. Food Service Supervisor. The center shall designate one staff member who shall be employed at least 10 hours a week who shall be responsible for meal preparation and/or serving. The food service supervisor must have ServSafe® certification.

2. Direct Service Worker. An unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well being, and who is involved in face-to-face direct contact with the participant.

3. Volunteers. Volunteers and student interns are considered a supplement to the required staffing component. A center which uses volunteers or student interns on a regular basis shall have a written plan for using these resources. This plan must be given to all volunteers and interns and it shall indicate that all volunteers and interns shall be:

- a. directly supervised by a paid staff member;
- b. oriented and trained in the philosophy of the center and the needs of participants as well as the methods of meeting those needs;
- c. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;
- d. aware of and briefed on any special needs or problems of participants; and
- e. provided program orientation and ongoing in-service training. The in-service training should be held at least quarterly.

C. The direct service worker to participant ratio shall be a minimum of one full-time direct service worker to every nine participants.

D. Center staffing requirements shall be based on licensed capacity; however, the center shall ensure that the following requirements are met regardless of the licensed capacity of the center.

1. The RN or LPN shall be on the premises daily for at least eight hours, the number of hours the center is open, or during the time participants are present at the center, whichever is less.

2. If the RN or LPN has been on duty at least eight hours and there are still participants present in the ADHC, the RN or LPN may be relieved of duty, however, at least one key staff person shall remain on duty at the center. The key staff person shall be the social service designee/social worker or the program manager.

3. A staff member who is certified in CPR must be on the premises at all times while clients are present.

E. Centers with a licensed capacity of 15 or fewer clients may designate one full-time staff person or full-time equivalent person to fill up to three "key staff" positions, and must employ at least one full-time person or full-time equivalent to fulfill key staff requirements.

F. Centers with a licensed capacity to serve 16-30 clients must employ at least two full-time persons or full-time equivalents to fulfill key staff requirements, and may designate one full-time staff person or full-time equivalent person to fill up to, but no more than, two "key staff" positions.

G. Centers with a licensed capacity to serve more than 30 clients must employ at least three full-time persons or full time equivalents to fill key staff positions. Each key staff position must be filled with a full-time person or full-time equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008), repromulgated LR 34:2634 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012).

Bruce D. Greenstein  
Secretary

1209#061

## RULE

### Department of Health and Hospitals Office of Public Health

Sanitary Code—General Provisions and Water Supplies  
(LAC 51:I.101 and 124 and XII.101, 105, 301, 337,  
355, 1101, 1103, 1301, 1701, 1903, and 1911)

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, the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), has amended Part I (General Provisions) and XII (Water Supplies) of the Louisiana State Sanitary Code (LAC 51). The intent of the amendment to Part I is to clearly state that the state health officer, acting personally, does have the authority to vary the application of any of the provisions contained in the state sanitary code. The intent of the amendments to Part XII are necessary in order that DHH-OPH may be able to maintain primacy (primary enforcement authority) from the United States Environmental Protection Agency (USEPA) over public water systems within Louisiana. USEPA requires state primacy agencies to adopt state rules and regulations which are no less stringent than the federal Safe Drinking Water Act's (42 U.S.C. §300f, et seq.) primary implementing regulations (40 CFR Part 141).

The portion of the Rule relative to Part XII amends and update DHH-OPH's existing rule for public water systems. The Safe Drinking Water Act Amendments of 1996 (Pub.L. 104-182/August 6, 1996) required the USEPA to issue updated rules relative to the regulation of disinfection by-products, lead and copper, and the treatment of surface waters used to produce potable water. Subsequently, the

USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on January 4, 2006 (71 FR 388-493) by promulgating a rule entitled "National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; Final Rule." The January 4, 2006 federal disinfectants and disinfection byproducts regulations became effective for Louisiana public water systems at the federal level on March 6, 2006. Again, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on January 5, 2006 (71 FR 653-786) by promulgating a rule entitled "National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule; Final Rule". The January 5, 2006 federal surface water treatment regulation became fully effective for Louisiana public water systems at the federal level on March 6, 2006. Likewise, the USEPA amended the National Primary Drinking Water Regulations (40 CFR Part 141) on October 10, 2007 (72 FR 57782-57820) by promulgating a rule entitled "National Primary Drinking Water Regulations for Lead and Copper: Short-Term Regulatory Revisions and Clarifications; Final Rule". The October 10, 2007 federal lead and copper regulation became effective for applicable Louisiana public water systems on the federal level on December 10, 2007. This rulemaking amends the current state regulations by adopting these newly amended federal disinfection by-products, lead and copper, and surface water treatment regulations by reference into Part XII.

For the reasons set forth above, Part I (General Provisions) and Part XII (Water Supplies) of the Louisiana State Sanitary Code (LAC 51:XII) is amended as follows.

#### **Title 51**

### **PUBLIC HEALTH—SANITARY CODE**

#### **Part I. General Provisions**

#### **Chapter 1. General**

#### **§101. Definitions**

**[formerly paragraph 1:001]**

A. ...

B. Unless otherwise specifically provided herein, the following words and terms used in this Chapter are defined for the purposes thereof as follows.

\*\*\*

*State Health Officer*—the individual designated as "state health officer" pursuant to R.S. 40:2 and, except for the purpose of issuing variances, those individuals authorized to act on behalf thereof pursuant to R.S. 40:4 and 40:5. For the purpose of issuing variances, the term shall include any individual the state health officer has personally and specifically designated to issue variances on his/her behalf.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and R.S. 40:5(3)(7)(17)(19)(20)(21).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 27:1693, (October 2001), repromulgated LR 28:1209 (June 2002), amended LR 28:2528 (December 2002), LR 34:652 (April 2008), LR 38:2375 (September 2012).

#### **§124. Variances from Code**

A. The state health officer has the authority and discretion to issue a written variance concerning the application of any provision of the code in any particular case when, in his/her opinion based upon the extenuating

circumstances presented, it is determined that the health and safety of the public will not be jeopardized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 and R.S. 40:5(3)(17).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 38:2375 (September 2012).

### **Part XII. Water Supplies**

#### **Chapter 1. General**

#### **§101. Definitions**

**[formerly paragraph 12:001]**

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the Sanitary Code, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows.

\*\*\*

*Louisiana Water Well Rules, Regulations, and Standards*—see LAC 56: I.

\*\*\*

*National Primary Drinking Water Regulations*—

a. drinking water regulations promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of title XIV of the Public Health Service Act, commonly known as the "Safe Drinking Water Act," 42 U.S.C.A. §300f et seq., and as published in the July 1, 2008 edition of the *Code of Federal Regulations*, Title 40, Part 141 (40 CFR 141), less and except:

i. Subpart H—Filtration and Disinfection (40 CFR §§141.70-141.76);

ii. Subpart P—Enhanced Filtration and Disinfection—Systems Serving 10,000 or More People (40 CFR §§141.170-141.175);

iii. Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People (40 CFR §§141.500—571);

iv. 40 CFR 141 drinking water regulation amendments promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of the title XIV of the Public Health Service Act, commonly known as the "Safe Drinking Water Act," 42 U.S.C.A. §300f, et seq., and as published in the in the *Federal Register* dated November 8, 2006 (Volume 71, Number 216, pages 65651 through 65659); and

v. 40 CFR 141 drinking water regulation amendments promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of the title XIV of the Public Health Service Act, commonly known as the "Safe Drinking Water Act," 42 U.S.C.A. §300f, et seq., and as published in the in the *Federal Register* dated January 4, 2007 (Volume 72, Number 2, pages 389 through 398).

b. when "Subpart H", "Subpart P", or "Subpart T" is used within the actual text of the drinking water regulations cited in Subparagraph "a." of this Paragraph (definition), "LAC 51:XII.Chapter 11" shall be substituted therein.

\*\*\*

AUTHORITY NOTE: The first source of authority for promulgation of the Sanitary Code is in R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40 of the Louisiana Revised Statutes. This Part is promulgated in accordance with R.S. 36:254 (B)(7), R.S. 40:4 (A)(8), R.S. 40:5 (2)(3)(5)(6)(17)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1318 (June

2002), amended LR 28:2513 (December 2002), LR 30:1194 (June 2004), LR 30:2326 (October 2004), LR 35:484 (March 2009), LR 35:1240 (July 2009), LR 38:2375 (September 2012).

**§105. Permit Requirements for a Potable Water Supply**

**[formerly paragraph 12:002-2]**

A. - C. ...

D. Public water systems shall be designed, installed, and maintained in accordance with the "Ten-State Standards" and the *Louisiana Water Well Rules, Regulations, and Standards*, plus any additional requirements of the state health officer as set forth in this Part. Exception: In regards to the application/enforcement of the "Ten-State Standards", the following Sections thereof shall be applied/enforced as follows:

1. sections 2.6, 3.2.1.2, 3.2.1.3.a, and 6.6.6 shall not be mandatory for non-community water supplies (unless the non-community water supply serves a hospital);

2. the water sight glass required under Section 7.2.4 shall not be mandatory if an automated control to maintain the proper water-to-air ratio in the tank is provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (5)(6)(7)(17)(19).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1320 (June 2002), amended LR 38:2376 (September 2012).

**Chapter 3. Water Quality Standards**

**§301. Mandatory Water Quality Standards for Public Water Systems**

A. Each public water supply shall comply with the maximum contaminant levels, maximum residual disinfectant levels, and treatment technique requirements as prescribed and as applicable in the National Primary Drinking Water Regulations, the Louisiana Total Coliform Rule (Chapter 9 of this Part), the Louisiana Surface Water Treatment Rule (Chapter 11 of this Part), the Louisiana Disinfectants and Disinfection Byproducts Rule (Chapter 13 of this Part), and the Louisiana Lead and Copper Rule (Chapter 17 of this Part). The state health officer, upon determining that a risk to human health may exist, reserves the right to limit exposure to any other contaminant. Further, each public water supply should comply with the National Secondary Drinking Water Regulations. Treatment to remove questionable characteristics shall be approved by the state health officer.

B. Each public water supply shall comply with the monitoring and analytical requirements specified in the National Primary Drinking Water Regulations, the Louisiana Total Coliform Rule (Chapter 9 of this Part), the Louisiana Surface Water Treatment Rule (Chapter 11 of this Part), the Louisiana Disinfectants and Disinfection Byproducts Rule (Chapter 13 of this Part), and the Louisiana Lead and Copper Rule (Chapter 17 of this Part), as applicable.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 (B)(7), R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1321 (June 2002), amended LR 30:2327 (October 2004), LR 38:2376 (September 2012).

**§337. Storage**

**[formerly paragraph 12:013-1]**

A. All finished water storage tanks shall be tightly covered and of watertight construction and made of concrete, steel or other materials approved for this purpose by the state health officer. When located wholly or partly below ground, such storage basins shall be of corrosion resistant materials.

B. - C. ...

D. [formerly paragraph 12:013-4 Coatings] Paints or other materials used in the coating of the interior of cisterns, tanks or other containers in which potable water is processed or stored shall be nontoxic to humans and shall be of such composition that the palatability of the water stored or processed shall not be adversely affected. The "Standard for Coating Steel Water Storage Tanks" (AWWA D102-11) published by the American Water Works Association shall be complied with. Determination of acceptability of coatings for potable water applications by the U.S. Environmental Protection Agency may be considered evidence of compliance with this Subsection. (The AWWA Standard can be obtained from the American Water Works Association, 6666 W. Quincy Ave., Denver, Colo. 80235.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (5)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1325 (June 2002), amended LR 38:2376 (September 2012).

**§355. Mandatory Disinfection**

**[formerly paragraph 12:021-1]**

A. - B. ...

C. Public water systems which use surface water or ground water under the direct influence of surface water shall meet the requirements of applicable Sections of the Surface Water Treatment Rule (LAC 51:XII.Chapter 11) as it pertains to CT and *Giardia*, *Cryptosporidium*, and virus removal/ inactivation/ disinfection requirements.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (5)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1326 (June 2002), amended LR 28:2514 (December 2002), LR 35:1240 (July 2009), LR 38:2376 (September 2012).

**Chapter 11. Surface Water Treatment Rule**

**Subchapter A. General Requirements and Definitions**

**§1101. General Requirements**

A. Although this Chapter is titled the "Surface Water Treatment Rule" (SWTR), it is comprised of the adoption of all the following individual rules:

1. the Louisiana Surface Water Treatment Rule (LSWTR) adopted on March 20, 1991 (see LR 17:271);

2. the May 20, 2000 rule (see LR 26:1036) that repealed obsolete turbidity monitoring rules (these obsolete rules pre-dated the newer turbidity monitoring rules contained in the LSWTR);

3. the Louisiana Interim Enhanced Surface Water Treatment Rule (LIESWTR) adopted on December 20, 2002 (LR 28:2513);

4. the Louisiana Long Term 1 Enhanced Surface Water Treatment Rule (LL1ESWTR) adopted on July 20, 2009 (LR 35:1239); and

5. the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) adopted by reference on September 20, 2012.

a. Pursuant to the definition of National Primary Drinking Water Regulations (as defined in this Part) and the provisions of §377 of this Part, the Department of Health and Hospitals (DHH) Office of Public Health (OPH) adopts by reference the United States Environmental Protection Agency (USEPA) federal Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) as published in the *Federal Register* dated January 5, 2006 (Volume 71, Number 3, pages 653-786). In addition, under §377 of this Part, DHH-OPH also adopted by reference certain USEPA technical corrections to the federal LT2ESWTR. The applicable technical corrections were published in the *Federal Register* dated January 30, 2006 (Volume 71, Number 19, page 4968) and in the *Federal Register* dated February 6, 2006 (Volume 71, Number 24, page 6136).

B. For public water systems using surface water or groundwater under the direct influence of surface water (GWUDISW), this Chapter establishes or extends treatment technique requirements in lieu of maximum contaminant levels for the following microbial contaminants: *Giardia lamblia* (cysts), viruses, heterotrophic plate count bacteria, *Legionella*, turbidity, and *Cryptosporidium* oocysts.

C. Each supplier using an approved surface water as its source of water supply shall provide multibarrier treatment necessary to reliably protect users from the adverse health effects of microbiological contaminants and to comply with the requirements and performance standards prescribed in this Chapter.

D. Unless the Department of Health and Hospitals, hereinafter referred to as DHH, determines that a shorter time limit is necessary due to an emergency situation or the finding of a significant deficiency, a supplier shall, within 90 days from the date of notification by DHH that a treatment plant using surface water or GWUDISW as its source of water supply does not meet the requirements of this Chapter, submit for DHH approval a plan and schedule to bring its system into compliance.

E. If the supplier disagrees with the DHH's notification issued pursuant to §1101.D of this Part, then the supplier shall submit in writing reasons and evidence for its disagreement as soon as possible but not later than 30 days from the receipt of the notification unless an extension of time to meet this requirement is requested and granted by the DHH. In cases when DHH's notification involves an emergency situation or the finding of a significant deficiency, the supplier shall submit in writing reasons and evidence for its disagreement as soon as possible but not later than 14 days from the receipt of such notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4 (A)(8) and R.S. 40:5 (2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1335 (June 2002), amended LR 28:2514 (December 2002), LR 35:1241 (July 2009), LR 38:2376 (September 2012).

### §1103. Definition of Terms

A. ...

B. Definitions. Definitions contained in §101 of this Part shall also apply to this Chapter where the following special definitions apply.

\* \* \*

*LT2ESWTR*—Long Term 2 Enhanced Surface Water Treatment Rule.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8), R.S. 40:5(2)(3)(5)(6)(17)(20), and R.S. 40:1148.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1336 (June 2002), amended LR 28:2514 (December 2002), LR 30:1195 (June 2004), LR 35:1241 (July 2009), LR 38:2377 (September 2012).

### Chapter 13. Disinfectants and Disinfection Byproducts Rule

#### Subchapter A. General

#### §1301. General

A. Pursuant to the definition of National Primary Drinking Water Regulations and the provisions of §377 of this Part, the Department of Health and Hospitals (DHH) Office of Public Health (OPH) adopts by reference the United States Environmental Protection Agency (USEPA) federal Disinfectants and Disinfection Byproducts Rule (D/DBPR) as published in the *Federal Register* dated December 16, 1998 (Volume 63, Number 241, pages 69389-69476). In addition, under §377 of this Part, DHH-OPH also adopted by reference certain USEPA technical corrections to the federal D/DBPR. The applicable technical corrections were published in the *Federal Register* dated January 16, 2001 (Volume 66, Number 10, pages 3769-3780) and in the *Federal Register* dated February 12, 2001 (Volume 66, Number 29, page 9903). The regulations in this Chapter are promulgated in order to clarify the state's discretionary decisions allowed by the federal requirements.

B. Pursuant to the definition of national primary drinking water regulations and the provisions of §377 of this Part, the Department of Health and Hospitals (DHH) Office of Public Health (OPH) adopts by reference the United States Environmental Protection Agency (USEPA) federal Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 D/DBPR) as published in the *Federal Register* dated January 4, 2006 (Volume 71, Number 2, pages 388-493). In addition, under §377 of this Part, DHH-OPH also adopted by reference certain USEPA technical corrections to the federal Stage 2 D/DBPR. The applicable technical corrections were published in the *Federal Register* dated January 27, 2006 (Volume 71, Number 18, pages 4644-4645), in the *Federal Register* dated June 29, 2006 (Volume 71, Number 125, page 37168) and in the *Federal Register* dated November 14, 2006 (Volume 73, Number 221, pages 67456-67463).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:1196 (June 2004), amended LR 38:2377 (September 2012).

### Chapter 17. Lead and Copper Rule

#### §1701. General

A. Pursuant to a revision of the definition of *National Primary Drinking Water Regulations* published in the May



20, 1994 *Louisiana Register* (LR 20:545), the Department of Health and Hospitals (DHH) Office of Public Health (OPH) initially adopted by reference the United States Environmental Protection Agency's (USEPA) federal Lead and Copper Rule (LCR) as published in the *Federal Register* dated June 7, 1991 (Volume 56, Number 110, pages 26547 through 26564), including the federal Lead and Copper Rule corrections as published in the *Federal Registers* dated July 15, 1991 (Volume 56, Number 135, page 32113) and June 29, 1992 (Volume 57, Number 125, pages 28788 through 28789). Pursuant to another revision of the definition of *National Primary Drinking Water Regulations* published in the May 20, 2000 *Louisiana Register* (LR 26:1037) and the provisions of paragraph 12:026 (now §377), further technical corrections [as published in the *Federal Register* dated June 30, 1994 (Volume 59, Number 125, page 33862 through 33864)] to the federal Lead and Copper Rule were adopted by DHH-OPH. Pursuant to another DHH-OPH revision of the definition of *National Primary Drinking Water Regulations*, published in the October 20, 2004 *Louisiana Register* (LR 30:2326), and the provisions of §377 of this Part, the DHH-OPH adopted by reference the USEPA federal Lead and Copper Rule Minor Revisions (LCRMRs) as published in the *Federal Register* dated January 12, 2000 (Volume 65, Number 8, pages 2003 through 2014) as well as additional technical corrections to the Lead and Copper Rule as published in the *Federal Register* dated June 29, 2004 (Volume 69, Number 124, pages 38855 through 38857). Pursuant to yet another DHH-OPH revision of the definition of the *National Primary Drinking Water Regulations*, published in the *Louisiana Register* (LR 38:2374, September 2012), and the provisions of §377 of this Part, the DHH-OPH adopted by reference the USEPA federal Lead and Copper Rule Short Term Revisions (LCRSTRs) as published in the *Federal Register* dated October 10, 2007 (Volume 72, Number 195, pages 57782 through 57820). The regulations in this Chapter are promulgated in order to clarify the state's discretionary decisions allowed by the federal requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:2327 (October 2004), amended LR 38:2377 (September 2012).

#### **Chapter 19. Public Notification Rule**

##### **§1903. Public Notification**

**[formerly §313]**

A. ...

B. In addition, if a public water system fails to report required analytical data to the appropriate office designated by the state health officer within the applicable time limit(s) stipulated by the National Primary Drinking Water Regulations (as defined in this Part), the Louisiana Total Coliform Rule (Chapter 9 of this Part), the Surface Water Treatment Rule (Chapter 11 of this Part), the Disinfectants and Disinfection Byproducts Rule (Chapter 13 of this Part), or the Approved Chemical Laboratories/Drinking Water Rule (Chapter 15 of this Part), and such data (e.g., turbidity measurements, corrosion control chemical concentrations, etc.) is required to determine a maximum contaminant level or treatment technique requirement prescribed by this Code, the public water system shall be assessed a monitoring violation and must give appropriate public notification.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 35:486 (March 2009), amended LR 35:1246 (July 2009), LR 38:2378 (September 2012).

#### **§1911. Public Notice for Certain Violations of Specific Drinking Water Rules**

A. ...

B. Surface Water Treatment Rule. Also refer to §1139 of this Part.

C. Disinfectants and Disinfection Byproducts Rule. Also refer to §1317 of this Part.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 40:5(2)(3)(5)(6)(17)(20).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 35:487 (March 2009), amended LR 35:1246 (July 2009), LR 38:2378 (September 2012).

Bruce D. Greenstein  
Secretary

1209#095

#### **RULE**

#### **Department of Public Safety and Correction Board of Private Investigator Examiners**

##### **Continuing Education Credits (LAC 46:LVII.519)**

The Board of Private Investigator Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and relative to the authority granted to it to adopt, amend or repeal rules provided by R.S. 37:3505, and to prescribe and adopt regulations governing the manner and conditions under which credit shall be given by the board for participation in professional education, has amended Chapter 5 of LAC 46:LVII by promulgating a new Rule governing continuing education credit.

The Board of Private Investigator Examiners promulgated LAC 46:LVII.519, Continuing Education Credit, to outline the standards that will govern the approval of continuing education credits by the board. The additions to continuing education policy are being made for the purpose of improving the courses provided to licensees to maintain the highest standards of the private investigator industry in the state. This amendment is consistent with the law and strictly part of the board's enforcement and regulation function as authorized by R.S. 37:3505.

#### **Title 46**

#### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

##### **Part LVII. Private Investigator Examiners**

##### **Chapter 5. Application, Licensing, Training, Registration and Fees**

##### **§519. Continuing Education Credits**

A. The following standards will govern the approval of continuing education credits by the LSBPIE.

1. The continuing education course must have significant intellectual or practical content and its primary objective must be to maintain or increase the licensee's professional competence as a private investigator.

2. The continuing education course must deal primarily with matters related to the private investigator profession and industry, ethical obligations or professionalism of the private investigator.

3. The continuing education course must be given by an approved continuing education provider and approved continuing education instructor.

4.a A continuing education course may be approved upon written application, which shall:

i. be submitted annually at least four months in advance of the continuing education course;

ii. be submitted on the application form provided by the LSBPIE via a format approved by LSBPIE;

iii. contain all information requested on the application form;

iv. at a minimum, be accompanied by a sample course outline that describes the course content, identifies the instructors and their credentials, lists the time devoted to each topic, and shows the date and location at which the program will be offered.

b. The LSBPIE may in its discretion, upon showing of good cause, grant retroactive approval of a continuing education course.

5. Upon approval of the application, a continuing education provider and instructor is conditionally approved to teach the continuing education course for one year.

6. The LSBPIE may at any time evaluate an activity and revoke approval of a continuing education course, a continuing education provider, and/or a continuing education instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505 (B)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 38:2378 (September 2012).

Pat Englade  
Executive Director

1209#057

## RULE

### Department of Transportation and Development Transportation Authority

#### Toll Appeal Procedure—LA 1 (LAC 70:XI.Chapter 3)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Transportation Authority promulgates a Rule entitled "Toll Appeal Procedure—LA 1," in accordance with R.S. 47:820.5.4 and 47:820.5.5.

#### Title 70

#### TRANSPORTATION

#### Part XI. Louisiana Transportation Authority

#### Chapter 3. Toll Appeal Procedure—LA 1

#### §301. Appeal Procedures

A. In addition to the appropriate statutory provisions, the following procedures shall be followed by the applicant for appeal:

1. the request for appeal may be mailed to the department by the toll violator;

2. the request for appeal may also be mailed in electronic format to the department; or

3. the request for appeal may be mailed to the department on a form provided by the department upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:2379 (September 2012).

#### §303. Appeal Procedures—LA 1

A. In addition to the appropriate statutory provisions, the following procedures shall be applied to the appeal process of toll violations at LA 1.

1. Notice of the date, time and location of the appeal hearing shall be mailed to the toll violator 10 days in advance of the scheduled hearing.

2. Location of the hearing shall alternate between the customer service center in Golden Meadow, 1821 South Alex Plaisance Blvd. (Hwy 3235) and the offices of the Crescent City Connection, 2001 Mardi Gras Blvd., New Orleans, Louisiana, unless otherwise notified.

3. Hearings shall be conducted quarterly.

4. The hearing agent shall be appointed by Louisiana Transportation Authority.

5. Only the registered owner of the violating vehicle may appear.

6. Rules of evidence or the Administrative Procedure Act are not applicable.

7. The hearing agent has the authority to waive administrative fees, in whole or in part, for good cause shown.

8. Failure to appear shall constitute denial of appeal.

9. Notice of decision shall be made in person or by mail.

10. Decision is final, subject to judicial review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:2379 (September 2012).

#### §305. Toll Equipment Malfunctions

A. If it has been determined and properly documented by departmental personnel that the toll system was malfunctioning at a particular time, then tickets issued during that period of time may be segregated and dealt with by the Violation Clerk in accordance with the provisions of R.S. 47:820.5.4(F)(5).

B. Proper documentation must include the date of the malfunction in the system, type of malfunction in the system and reason for invalidation of the ticket.

C. In the case of such malfunction, appeals of tickets issued during that time frame may be received by telephone, fax, or electronic mail and then will be properly documented by the appropriate departmental personnel. In addition, no administrative fees will be assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:2379 (September 2012).

Sherri H. LeBas, P.E.  
Secretary

1209#031

## RULE

### Department of Transportation and Development Transportation Authority

#### Toll Exemptions—LA 1 (LAC 70:XI.101)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Transportation Authority promulgates a Rule entitled "Toll Exemptions—LA 1," in accordance with R.S. 47:820.5.4 and 47:820.5.5.

#### Title 70

#### TRANSPORTATION

#### Part XI. Louisiana Transportation Authority

#### Chapter 1. Toll Exemptions—LA 1

#### §101. Exempt Entities

A. The following entities which own vehicles shall have free and unhampered passage on LA 1 when the entity-owned vehicle is being utilized.

##### 1. Law Enforcement

a. Free passage shall be granted to all law enforcement personnel who are employed on a full-time basis and operate law enforcement agency equipment.

b. *Law Enforcement Agency*, for purposes of this Rule shall mean any agency of the state or its political subdivisions and the federal government who are responsible for the prevention and detection of crime and the enforcement of the criminal, traffic or highway laws of this state or similar federal laws and who are employed in this state. Officers who serve in a voluntary capacity or as honorary officers are not included.

c. Agencies which meet the above criteria shall include the Louisiana State Police, enforcement division agents of the Louisiana Department of Wildlife and Fisheries, sheriffs' departments, levee board police departments, port police departments, the United States Secret Service, the United States Marshall Service and the Federal Bureau of Investigation exclusively.

d. The right of free passage for the state police and law enforcement personnel shall be exercised only by means of automatic vehicular identification toll tags.

e. Upon the written request of the superintendent of state police or the head of an eligible law enforcement agency and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

f. A fee of \$12.50 shall be charged for the issuance of each tag.

g. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by state police with state police equipment and by designated law enforcement personnel with law enforcement agency equipment. The appropriate law enforcement agency shall be

responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

##### 2. Emergency Vehicles with Lights Available for Use.

All emergency vehicles performing a public service that permits them, under existing laws and regulations, to display emergency vehicle lights in order to carry out police, fire and ambulance functions in accordance with the laws relative thereto, are exempt from payment of tolls (reflects Act 30 of 2010, R.S. 47:820.5.6).

a. Specifically included in this exception are ambulances from Grand Isle Emergency Vehicle Services (Act 826 of 2010, R.S. 47:820.5.6).

b. Specifically included in this exception is a Grand Isle medical transportation van (Act 826 of 2010, R.S. 47:820.5.6).

c. The right of free passage for these emergency vehicles shall be exercised only by means of automatic vehicular identification toll tags.

d. Upon the written request of Grand Isle Emergency Vehicle Services and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

e. A fee of \$12.50 shall be charged for the issuance of each tag.

f. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by ambulances owned by the Grand Isle Emergency Vehicle Services and their medical transportation van. The Grand Isle Emergency Vehicle Services shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

##### 3. Fire Departments

a. The right of free passage on LA 1 for firemen, whether professional or volunteer, shall be exercised only by means of automatic vehicular toll tags.

b. Upon the written request of the chief of a municipal or parish fire department or of a fire prevention district, or of a volunteer fire organization, and upon payment of the required fee, the department shall issue to such department or district or organization the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

c. A fee of \$12.50 shall be charged for the issuance of each tag.

d. The use of the automatic vehicular identification toll tags provided to a fire department or district shall be limited to travel made by firemen during the performance of fire fighting and related duties. The appropriate fire department or district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

##### e. Procedure for Volunteer Firemen

i. All volunteer fire organizations shall apply to the department and shall certify the following:

(a) the address of the volunteer fire organization's domicile or headquarters;

(b) the general location served by the volunteer fire organization;

(c) that the members of the volunteer fire organization are required to travel across the highway only

in performance of official fire fighting or fire prevention services;

(d). the number of crossings made in one year on the facility by members of the organization.

ii. The application must be signed by the chief executive officer of the volunteer fire organization.

#### 4. Employees of the Governing Authority

a. The free passage shall be granted to those persons operating a vehicle which has been designated as an official Grand Isle Levee vehicle (Act 826 of 2010, R.S. 47:820.5.6).

i. The right of free passage for the official Grand Isle Levee vehicle shall be exercised only by means of automatic vehicular identification toll tag.

ii. Upon the written request of the Grand Isle Levee District and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

iii. A fee of \$12.50 shall be charged for the issuance of each tag.

iv. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the official vehicle of the Grand Isle Levee vehicle. The Grand Isle Levee District shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

b. The free passage shall be granted to logo bearing vehicles of the Grand Isle Port Commission (Act 826 of 2010, R.S. 47:820.5.6).

i. The right of free passage for logo bearing vehicles of the Grand Isle Port Commission shall be exercised only by means of automatic vehicular identification toll tags.

ii. Upon the written request of the Grand Isle Port Commission and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

iii. A fee of \$12.50 shall be charged for the issuance of each tag.

iv. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by logo bearing vehicles of the Grand Isle Port Commission. That agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

#### 5. Military Personnel

a. Any person belonging to the organized military of the state, who is in uniform or possesses an order for duty, shall be allowed free passage for himself, his vehicle and the military property of the state in his charge while going to, engaged in or returning from any parade, drill or meeting which he or she is required to attend, or upon being called to, engaging in or returning from any active state duty ordered by the governor.

b. The right of free passage for military personnel shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the military personnel and payment of the required fee, the department shall issue the number of automatic vehicular identification

toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by military personnel as described in §101.A.5.a. The appropriate military agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

#### 6. Students in School Buses

a. Free passage is offered to students in clearly marked school buses and to the school bus and driver.

b. The right of free passage for students in school buses and the bus and driver shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the appropriate school district and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the students in school buses. The appropriate school district shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

#### 7. Mass Transit Vehicles

a. Any publicly owned vehicles and any vehicle used in connection with or in furtherance of the mass transportation of the general public which is owned and operated by any person, firm or corporation engaged in a publicly subsidized transit business or which is owned by a public body shall have free and unhampered passage at all times over the LA 1 facilities.

b. The right of free passage for mass transit vehicles shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the owner of the mass transit vehicle, and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by mass transit vehicles. The appropriate agency shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

#### 8. Boy Scouts, Girl Scouts and Camp Fire Girls

a. Boy Scouts, Girl Scouts and Camp Fire Girls when assembled in uniform in a parade or group consisting of not less than 15 and under the supervision of a scout master or other responsible person shall have free and unhampered passage at all times over the LA 1 facilities.

b. The right of free passage for Boy Scouts, Girl Scouts and Camp Fire Girls shall be exercised only by means of automatic vehicular identification toll tags.

c. Upon the written request of the and payment of the required fee, the department shall issue the number of automatic vehicular identification toll tags requested for use in connection with the exemption from tolls.

d. A fee of \$12.50 shall be charged for the issuance of each tag.

e. The use of the automatic vehicular identification toll tags provided shall be limited to crossings made by the above described groups. The appropriate supervisors shall be responsible for any crossing made using the automatic vehicular identification toll tag outside the scope of the exemption from tolls.

9. Residents of Grand Isle

a. Residents of Grand Isle who purchase toll exemption tags shall have free and unhampered passage at all times of the LA 1 facilities.

b. A fee of \$12.50 shall be charged for the issuance of each tag.

c. In order to procure the tag, the resident must show a motor vehicle registration reflecting registration in the zip code for Grand Isle, and one of the following:

- i. Louisiana driver's license;
- ii. proof of homestead exemption;
- iii. voter registration card (Act 826 of 2010, R.S.

47:820.5.6).

d. The accounts of the residents of Grand Isle may cover free passage for multiple plated vehicles, however the resident owner must have registered all vehicles in the Grand Isle zip code and provide one of the items listed in Subparagraph c of this Paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:820.5.4 and 820.5.5.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Transportation Authority, LR 38:2380 (September 2012).

Sherri H. LeBas, P.E.  
Secretary

1209#012

**RULE**

**Department of Revenue  
Policy Services Division**

Electronic Funds Transfer (LAC 61:I.4910)

Under the authority of R.S. 47:1511 and 1519 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division amends LAC 61.I.4910.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 49. Tax Collection**

**§4910. Electronic Funds Transfer**

A. - E.4. ...

5. Tax return must be filed.

a. A tax return or report must be filed separately from the electronic transmission of the remittance.

b. Failure to timely file a tax return or report shall subject the affected taxpayer or obligee to penalty, interest, and loss of applicable discount, as provided by state law.

6. In situations involving extenuating circumstances as set forth in writing by the taxpayer and deemed reasonable by the secretary of the Department of Revenue, the secretary may grant an exception to the requirement to transmit funds electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 19:1032 (August 1993), repromulgated LR 19:1340 (October 1993), amended LR 20:672 (June 1994), LR 23:448 (April 1997), amended by the Department of Revenue, Office of the Secretary, LR 25:2442 (December 1999), amended by the Department of Revenue, Policy Services Division, LR 28:866 (April 2002), LR 29:2854 (December 2003), LR 31:484 (February 2005), LR 38:2382 (September 2012).

Jane Smith  
Secretary

1209#080

**RULE**

**Department of Revenue  
Policy Services Division**

Withholding Tax Statements; Electronic Filing  
Requirements (LAC 61:I.1515)

Under the authority of R.S. 47:114, 1511, 1519, and 1520 and in accordance with the provisions of the Administrative Procedure Act, R.S.49:950 et seq., the Department of Revenue, Policy Services Division amends LAC 61.I.1515.

Beginning with taxable periods on or after January 1, 2012, pursuant to R.S.47:114, 1519, and 1520 employers that are required to remit electronically are required to file a separate return electronically on a quarterly basis. Additionally, to correspond with administrative form changes relative to the use of Form L-3, Form L-3 will no longer be used for the purpose of annually reconciling accounts, but rather will be more effectively used as a transmittal for W-2s.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 15. Income: Withholding Tax**

**§1515. Withholding Tax Statements and**

**Returns—Electronic Filing Requirements**

A. Employers that are required to electronically remit withholding tax pursuant to R.S. 47:1519(B) and LAC 61:I.4910.A, shall file a separate L-1 return electronically on a quarterly basis, effective for the periods beginning after December 31, 2011.

B. Employers are required to file a transmittal of withholding tax statements, Form L-3, with copies of the employee withholding statements, Form W-2s.

1. The L-3 transmittal and employee withholding statements must be filed on or before the first business day following February 27 for the preceding calendar year.

2. If a business terminates during the year, the L-3 transmittal and employee withholding statements must be filed within 30 days after the last month in which the wages were paid.

3. If the due date falls on a weekend or holiday, the report is due the next business day and becomes delinquent the following day.

C. The following employers are required to file the Form L-3, and the employee withholding statements, Form W-2s, electronically:

1. employers that file 250 or more employee withholding statements due on or after January 1, 2008;
2. employers that file 200 or more employee withholding statements due on or after January 1, 2010;
3. employers that file 150 or more employee withholding statements due on or after January 1, 2012;
4. employers that file 100 or more employee withholding statements due on or after January 1, 2014;
5. employers that file 50 or more employee withholding statements due on or after January 1, 2016.

D. Electronic Filing Options. The Form L-3, and the employee withholding statements, Form W-2, may be filed electronically as follows:

1. electronic filing using the LaWage electronic filing application via the LDR website, [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov);

2. submission on CD or DVD:

a. records must be submitted using a record layout that is consistent with the Internal Revenue Code requirements;

b. CDs and DVDs must be labeled with the following information:

- i. file name;
- ii. employer's Louisiana account number;
- iii. employer's name;
- iv. employer's mailing address;
- v. tax year; and
- vi. the CD or DVD number and total number of CDs or DVDs for multi-volume submissions (example: 1 of 3, etc.);

3. any other electronic method authorized by the secretary;

4. submissions by magnetic media including tapes and tape cartridges are no longer allowed.

E. Separate submissions must be made for each employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1519, R.S. 47:1520 and R.S. 47:114.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 28:1489 (June 2002), amended LR 35:2204 (October 2009), LR 38:2382 (September 2012).

Jane Smith  
Secretary

1209#079

## RULE

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Reef Fish (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby amend a Rule, LAC 76:VII.335, modifying existing reef fish harvest regulations. Authority for amendment of this Rule is included in R.S. 56:6(25)(a), 56:320.2, 56:326.1 and 56:326.3.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishery

#### §335. Reef Fish—Harvest Regulations

A. Recreational Bag Limits Regarding the Harvest of Reef Fish—triggerfishes, amberjacks, grunts, wrasses, snappers, groupers, sea basses, tilefishes, and porgies, within and without Louisiana's territorial waters.

Species	Recreational Bag Limits
1. Red snapper	2 fish per person per day
2. Queen, mutton, blackfin, cubera, gray, dog, mahogany, silk, yellowtail snappers, schoolmaster and wenchman	10 fish per person per day (in aggregate)
3. Vermilion snapper, lane snapper, gray triggerfish, almaco jack, goldface tilefish, tilefish, blackline tilefish, anchor tilefish, blueline tilefish	20 per person per day (in aggregate)
4. Red hind, rock hind, speckled hind, black grouper, misty grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, warsaw grouper, gag grouper, scamp	4 fish per person per day (in aggregate) with not more than 1 speckled hind and 1 warsaw grouper per vessel and with not more than 4 red grouper per person and not more than 2 gag grouper per person included in the bag limit
5. Greater amberjack	1 fish per person per day
6. Banded rudderfish and lesser amberjack	5 fish per person per day (in aggregate)
7. Hogfish	5 fish per person per day
8. No person shall possess goliath grouper or Nassau grouper whether taken from within or without Louisiana territorial waters per LAC 76:VII.337.	

B. - D.7. ...

E. Recreational and commercial minimum and maximum size limits, unless otherwise noted.

Species	Minimum Size Limits
1. Red snapper	16 inches total length (Recreational) 13 inches total length (Commercial)
2. Gray, yellowtail, cubera, dog, mahogany snapper, and schoolmaster	12 inches total length
3. Lane snapper	8 inches total length
4. Mutton snapper	16 inches total length
5. Vermilion snapper	10 inches total length
6. Red grouper	20 inches total length (Recreational) 18 inches total length (Commercial)

Species	Minimum Size Limits
7. Yellowfin grouper	20 inches total length
8. Gag grouper	22 inches total length
9. Black grouper	22 inches total length (Recreational) 24 inches total length (Commercial)
10. Scamp	16 inches total length
11. Greater amberjack	30 inches fork length (Recreational) 36 inches fork length (Commercial)
12. Black seabass	8 inches total length
13. Hogfish	12 inches fork length
14. Banded rudderfish and lesser amberjack	14 inches fork length (minimum size) 22 inches fork length (maximum size)
15. Gray triggerfish	14 inches fork length

F. Definitions. Federal regulations 50 CFR Part 622.2 defines charter vessels and headboats as follows.

*Charter Vessel*—a vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than four persons aboard, including operator and crew.

*Headboat*—a vessel that holds a valid certificate of inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than four persons aboard, including operator and crew.

G. Seasons

1. Seasons for the commercial harvest of reef fish species or groups shall be closed during the periods listed below. Possession of reef fish in excess of the daily bag limit while on the water is prohibited during the specified closed season. Any reef fish harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. This prohibition on sale/purchase does not apply to reef fish that were harvested, landed ashore, sold and purchased prior to the closed season. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing reef fish taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

Species or Group	Closed Season
a. Greater Amberjack	March 1 through May 31

2. Seasons for the recreational harvest of reef fish species or groups listed below shall be closed during the periods listed below.

Species or Group	Closed Season
a. Gag	November 1 through June 30 of the following year.
b. Black, red, yellowfin, and yellowmouth groupers, rock hind red hind and scamp.	February 1 through March 31 of each year.

Species or Group	Closed Season
c. Red snapper	October 1 through May 31 of the following year.
d. Greater amberjack	June 1 through July 31 of each year.

3. Persons aboard a vessel for which the permits indicate both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain reef fish under the recreational take and possession limits specified in §335.A and §335.C, recreational seasons specified in §335.G.2 and size limits specified in §335.E, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel.

4. The provisions of §335.G apply to fish taken within or without Louisiana's territorial waters.

5. The secretary of the Department of Wildlife and Fisheries is hereby authorized, upon notification to the chairman of the Wildlife and Fisheries Commission, to close, open, re-open or re-close any reef fish season as needed when informed of such by the National Marine Fisheries Service in order to maintain consistency with modifications in the adjacent federal waters, should the federal seasons be modified.

H. Wholesale dealers are required to comply with the provisions of R.S. 56:306.5 and R.S. 56:306.6 when acquiring, purchasing, possessing and selling reef fish. Wholesale dealers shall maintain approval codes issued by NOAA Fisheries associated with all transactions of red snapper, groupers and tilefish species on purchases and sales on their records.

I.1. Devices

a. *Circle Hook*—a fishing hook designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular or oval, shape.

b. *Dehooking Device*—a device intended to remove a hook embedded in a fish to release the fish with minimum damage.

c. *Venting Tool*—a device intended to deflate the abdominal cavity of a fish to release the fish with minimum damage.

2. For a person on board a vessel to fish for or possess Gulf reef fish in the Gulf EEZ, the vessel must possess on board and such person must use the gear as specified below.

a. Non-stainless Steel Circle Hooks. Non-stainless steel circle hooks are required when fishing with natural baits for reef fish.

b. Dehooking Device. At least one dehooking device is required and must be used to remove hooks embedded in Gulf reef fish with minimum damage. The hook removal device must be constructed to allow the hook to be secured and the barb shielded without re-engaging during the removal process. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the Gulf reef fish fishery.

c. Venting Tool. At least one venting tool is required and must be used to deflate the abdominal cavities of Gulf reef fish to release the fish with minimum damage. This tool must be a sharpened, hollow instrument, such as a

hypodermic syringe with the plunger removed, or a 16-gauge needle fixed to a hollow wooden dowel. A tool such as a knife or an ice-pick may not be used. The venting tool must be inserted into the fish at a 45-degree angle approximately 1 to 2 inches (2.54 to 5.08 cm) from the base of the pectoral fin. The tool must be inserted just deep enough to release the gases, so that the fish may be released with minimum damage.

J. No person who, pursuant to state or federal law, is subject to the jurisdiction of this state shall violate any federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens Fishery Conservation Act and published in the *Code of Federal Regulations* as amended Title 50 and 15, for reef fishes while fishing in the EEZ, or possess, purchase, sell, barter, trade, or exchange reef fishes within or without the territorial boundaries of Louisiana in violation of any state or federal law, rule or regulation particularly those rules and regulations enacted pursuant to the Magnuson-Stevens

Fishery Conservation Act and published in the *Code of Federal Regulations* as amended Title 50 and 15 law.

AUTHORITY NOTE: Promulgated in accordance with R.S.56:6(25)(a), R.S. 56:320.2(C), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138 (June 1998), LR 24:1139 (June 1998), LR 24:1972 (October 1998), LR 26:793 (April 2000), LR 26:1505 (July 2000), LR 26:2833 (December 2000), LR 31:3166 (December 2005), LR 33:1156 (June 2007), repromulgated LR 33:1397 (July 2007), amended LR 34:2209 (October 2008), LR 34:2682 (December 2008), LR 36:1791 (August 2010), LR 38:2383 (September 2012).

Ann L. Taylor  
Chairman

1209#004



# Notices of Intent

## NOTICE OF INTENT

### Department of Children and Family Services Division of Programs Economic Stability Section

Child Care Assistance Program (CCAP)—Reducing the Income Limit for Eligibility (LAC 67:III.5103 and 5109)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 12, Chapter 51, Child Care Assistance Program, Sections 5103 and 5109. Amendment is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF).

Section 5103 is being amended to reduce the maximum income limit for Child Care Assistance Program (CCAP) eligibility. The income limit is based on a percentage of the state median income (SMI), which is being reduced from 65 percent SMI to 55 percent SMI.

Section 5109 is being amended to allow the department to reduce the number of children's absences paid to CCAP providers who care for CCAP children that are authorized for full-time care.

The department considers this amendment necessary to provide core services to the most vulnerable families who are in dire need of these vital services while continuing to operate with the funding available for CCAP.

This proposed Rule was made active by an Emergency Rule effective August 1, 2012.

#### Title 67

#### SOCIAL SERVICES

#### Part III. Economic Stability

#### Subpart 12. Child Care Assistance Program

#### Chapter 51. Child Care Assistance Program

#### Subchapter A. Administration, Conditions of Eligibility, and Funding

#### §5103. Conditions of Eligibility

A. - B.4.c. ...

d. Exception: a household in which all of the members described in Paragraph B.4 of this Section meet the disability criteria is not eligible for child care assistance unless one of those members meets, effective June 1, 2011 the required minimum average of 30 activity hours per week.

5. Household income does not exceed 55 percent of the state median income for a household of the same size. *Income* is defined as:

B..5.a. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003),

LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:1464 (August 2006), LR 33:506 (March 2007), LR 34:692 (April 2008), LR 36:1278 (June 2010), repromulgated LR 136:1767 (August 2010), LR 37:1374 (May 2011), amended by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 38:

#### Subchapter B. Child Care Providers

#### §5109. Payment

A. - D. ...

E. Payment will not be made for absences of more than two days by a child in any calendar month or for an extended closure by a provider of more than two consecutive days in any calendar month. A day of closure, on a normal operating day for the provider, is counted as an absent day for the child(ren) in the provider's care. If a child authorized for full-time care attends child care less than four hours in one day, this will be counted as a half day absent and half the daily rate will be paid to the provider. No absences will be authorized for part-time care. Exception: in cases of a federal/state/locally declared emergency situation, or other special circumstances, the department may at the discretion of the deputy secretary of programs waive this absence policy.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:847 (April 2010), LR 36:1279 (June 2010), LR 37:3491 (December 2011), amended by the Department of Children and Family Services, Division of Programs, Economic Stability Section, LR 38:

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? Due to the reduction of the income limit for CCAP, households at the upper level of the current income limits will no longer be eligible for CCAP. The department's goal is to assist as many low-income families as possible so that they can remain employed or continue attending school or a job training program that will lead to self-sufficiency.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This proposed Rule will not have an effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? Some families will no longer be eligible to receive CCAP due to the reduction of the income limit. It will be necessary for these families to assume a greater cost of their child care.

4. What effect will this have on family earnings and family budget? It will be necessary for families that are no longer eligible to receive CCAP to assume a greater cost of their child care due to the reduction of the income limit for CCAP.

5. What effect will this have on the behavior and personal responsibility of children? This proposed Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this program is strictly a department function.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action may have an adverse impact on small businesses. The department, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Public Comments**

All interested persons may submit written comments through October 25, 2012, to Sammy Guillory, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70821-9065.

#### **Public Hearing**

A public hearing on the proposed Rule will be held on October 25, 2012, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-125, Baton Rouge, Louisiana, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (voice and TDD).

Suzy Sonnier  
Secretary

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

#### **RULE TITLE: Child Care Assistance Program (CCAP)—Reducing the Income Limit for Eligibility**

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

This Rule proposes to amend the Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 12 Child Care Assistance, Chapter 51 Child Care Assistance Program (CCAP), Subchapter A, Sections 5103 and 5109. Adoption is pursuant to the authority granted to the department by the Child Care and Development Fund (CCDF).

The proposed Rule makes the following amendments to CCAP that are necessary for CCAP clients to participate in and be eligible for CCAP benefits with the available childcare funding within the Department of Children and Family Services (DCFS) budget: (1) The maximum income limit for eligibility that is based on a percentage of the State Median Income (SMI) is being reduced from 65 percent to 55 percent;

(2) The sliding fee scale is being adjusted in line with the change in income eligibility; and (3) Reduce the payments for absences to CCAP providers to a maximum of two days per month. Currently, CCAP providers are paid for up to five days of absences per month per child authorized for full-time care. As a result of these amendments, DCFS estimates total annual savings of \$8,197,470 in federal funds will be realized in state fiscal year (SFY) 2013 and \$9,275,696 federal funds in SFY 2014 and 2015.

DCFS estimates that there are 1,410 CCAP cases that will exceed the income limit of 55 percent SMI. There is an average of 1.3 children per CCAP case and the average annual CCAP payment is \$1,317.84 per child at the highest eligible income level. This would be an estimated \$2,415,600 in reduced expenditures/savings per year (1,410 cases x 1.3 children = 1,833 children x \$1,317.84/year = (\$2,415,600)/year).

In addition, DCFS estimates annual savings from sliding fee scale changes that are being implemented with the income eligibility changes in the amount of (\$3,214,787)/year. The department is also making its annual adjustment for the increase in the poverty level in the sliding fee scales at the same time. The savings will be reduced in SFY 2013 as the changes were implemented in August 2012.

DCFS is currently paying childcare providers for absences equal to a maximum of 23 percent of authorized days in a month (maximum of 5 absences per month). DCFS is planning to change to payment for a maximum of 2 absences per month. The estimated savings generated by this change is (\$3,645,309)/year. The change for SFY 2013 will be less, as it will not be in effect until August 2012; absence payments are made in September 2012.

The only cost associated with this proposed Rule is the cost of publishing rulemaking that is estimated to be approximately \$1,476 for SFY 12/13. This is a one-time cost that is routinely included in the department's annual operating budget.

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

Implementation of this Rule will have no effect on state or local revenue collections. The amount of federal block grant funding for CCAP has remained relatively constant over the past several years. Unfortunately, each year, DCFS is unable to provide the same services at the same funding levels to due the raising cost of services.

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

Households who exceed the income limit for their household size will no longer be eligible for CCAP benefits. An estimated 1,410 clients whose CCAP benefits will end due to the reduction of the income limit to 55 percent SMI will no longer have their child care paid for through CCAP and must find other means of payment to assist with child care assistance.

The sliding fee scale will also change as a result of the decrease in income eligibility and the annual update of the poverty level. It is estimated that 552 clients will have their co-payments decreased as a result of the change in the poverty level. It is estimated that 1,484 clients will have their co-payments increased as a result of the changes associated with the income eligibility decrease.

Providers who care for children receiving assistance from the CCAP will be financially impacted by the discontinuation of absence payments. An estimated 2,289 CCAP providers will receive reduced payments for absences. The reduced number of families eligible for CCAP will also affect childcare providers.

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

Continuing to utilize childcare services may not be feasible for an estimated 1,410 clients to care for their children without

CCAP due to the reduction of the income limit to 55 percent SMI. Child care will also become more expensive for an estimated 1,484 clients. These clients may lose employment or may not be able to participate in a job training or educational activity due to a lack of affordable child care.

Sammy Guillory  
Deputy Assistant Secretary  
1209#043

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Children and Family Services Division of Programs Licensing Section

Juvenile Detention Facilities Licensure  
Effective Date (LAC 67:V.7507)

The Department of Children and Family Services (DCFS), Division of Programs, Licensing Section, in accordance with provisions of the Administrative Procedure Act, R.S. 49:953(A), proposes to amend LAC 67:V, Subpart 8, Chapter 75, Juvenile Detention Facilities, §7507, to change the effective date of the licensing standards for juvenile detention facilities.

Section 7507, Licensing Requirements, is being amended in accordance with Act 366 of the 2012 Legislative Session. Act 366 amended and reenacted R.S. 15:110(E) by changing the effective date for the licensure of all juvenile detention facilities from on or before January 1, 2013, to on or before July 1, 2013. This includes facilities owned or operated by any governmental, profit, nonprofit, private, or public agency.

This notice was made active by an Emergency Rule effective August 2, 2012.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Child Welfare

#### Subpart 8. Residential Licensing

#### Chapter 75. Juvenile Detention Facilities

#### §7507. Licensing Requirements

##### A. General Provisions

1.a. All providers meeting the criteria of Section 7507.A.1.b shall obtain a license on or before July 1, 2013 in accordance with R.S. 15:1110(E) in order to continue operating.

b. All providers in operation prior to July 1, 2013 may continue to operate without a license if timely application for a license has been made to DCFS. Providers shall make application to the department within 90 days of the effective date of this Rule. All requirements herein shall be met, unless otherwise expressly stated in writing by the department prior to the issuance of a license.

2. Effective July 1, 2013, it is mandatory to obtain a license from the department prior to beginning operation.

##### A.3. - I.7...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1110.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:1561 (July 2012), amended LR 38:

#### Family Impact Statement

1. What effect will this Rule have on the stability of the family? There will be no effect on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and the family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

#### Small Business Impact Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### Public Comments

All interested persons may submit written comments through October 26, 2012, to Sammy Guillory, Deputy Assistant Secretary of Programs, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70821-9065.

#### Public Hearing

A public hearing on the proposed Rule will be held on October 26, 2012, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, Louisiana, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (voice and TDD).

Suzy Sonnier  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Juvenile Detention Facilities Licensure  
Effective Date**

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

This Rule proposes to amend the Louisiana Administrative Code (LAC) 67, Part V, Subpart 8, Chapter 75 Juvenile Detention Facilities, Section 7507, to change the effective date of the licensing standards for juvenile detention facilities.

The Department of Children and Family Services (DCFS) shall amend Section 7507 in accordance with Act 366 of the 2012 Legislative Session. Act 366 amended and reenacted R.S. 15:110(E) by changing the effective date for the licensure of all juvenile detention facilities from on or before January 1, 2013 to, on or before July 1, 2013. This includes facilities owned or operated by any governmental, profit, nonprofit, private, or public agency.

The only cost associated with this proposed Rule is the cost of publishing rulemaking that is estimated to be approximately \$820.00 in FY12/13. This is a one-time cost that is routinely included in the department's annual operating budget.

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

Current LAC 67, Part V, Subpart 8, Chapter 75, Section 7507 allows DCFS to charge an application fee and annual licensing fee. Since the effective date for licensure has been changed from on or before January 1, 2013 to on or before July 1, 2013, revenue collections of an indeterminable amount from application fees and annual licensing fees are projected in FY 13/14 instead of FY 12/13.

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

This proposed Rule changes the effective date for the licensure of all juvenile detention facilities from on or before January 1, 2013 to on or before July 1, 2013. Therefore, juvenile detention facilities currently in operation will have an additional 6 months before they must seek licensing from DCFS or close.

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

There is no estimated impact on competition and employment.

Sammy Guillory  
Deputy Assistant Secretary  
1209#044

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 133—Scholarship Programs  
(LAC 28:CLIII.1301, 1303, and 1305)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 133—Scholarship Programs*, §1301. Purpose, §1303. Participation Criteria for Nonpublic Schools, and §1305. Accountability Standards for Participating Nonpublic Schools. The proposed policy revisions reflect the provision in Act 2 of the 2012 Regular Legislative Session requiring the Department of Education to develop criteria for participation in the Student

Scholarships for Educational Excellence Program that also includes an accountability system for participating students at participating schools.

**Title 28**

**EDUCATION**

**Part CLIII. Bulletin 133—Scholarship Programs  
Chapter 13. Criteria for School Participation in the Student Scholarships for Educational Excellence Program**

**§1301. Purpose**

A. The Student Scholarships for Educational Excellence Act requires the LDE to “develop criteria for [school] participation that includes an accountability system for participating students at participating schools.” In accordance with this requirement, the criteria set forth in this Chapter shall reflect the following values:

1. achievement—a common standard for student performance across the system of traditional public, charter public, and nonpublic schools;
2. autonomy—minimizing bureaucracy and complexity;
3. responsibility—upholding the public trust when public funds are involved;
4. safety—protection of children’s health and welfare.

B. The purpose of these criteria shall be to protect children while avoiding a labyrinth of policies that tie the hands of educators and families. They exist to minimize the rare harmful circumstance rather than to regulate day-to-day conditions in participating schools. In applying these criteria, the state superintendent may waive any provisions of this Chapter needed to ensure the academic welfare, health, or safety of participating students, or to address extenuating circumstances.

C. Any revisions to this Chapter shall be referred to the Nonpublic Schools Council for review and comment prior to consideration by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

**§1303. Participation Criteria for Nonpublic Schools**

A. To participate in the scholarship program, nonpublic schools shall satisfy the criteria within this Chapter in addition to criteria for participation already established in law. Schools that do not meet these criteria may be declared ineligible to participate in the program. Ineligibility to participate may result in the school enrolling no new students for one or more years, enrolling no new students permanently, or ending all participation immediately.

Focus Area	Standard
Enrollment	Participating schools shall indicate the number of students they are able and willing to serve. If the increase to total student enrollment would result in total student enrollment that is greater than 125 percent of their total student enrollment in the previous school year or 50 students more than were enrolled in the previous school year, including pre-kindergarten enrollment, the LDE shall consider granting the request after a review of parent demand (demonstrated through the student application process) and the school’s demonstrated capacity to effectively serve such students.

Focus Area	Standard
Financial Practice	Participating schools shall comply with the following rules regarding financial practice. Violations may result in a school being declared ineligible to participate.
	<p><i>Use of Funds—</i></p> <p>Scholarship funds shall be spent only on “educational purposes,” as defined in the most recently approved Minimum Foundation Program formula. Any expenditure of scholarship funds constituting gross irresponsibility or gross individual enrichment is prohibited.</p> <p>No officer, administrator, director, manager, or employee of a participating school shall use the authority of his office or position in connection with the school’s participation in the scholarship program, directly or indirectly, in a manner intended to compel or coerce any person to provide himself or any other person with anything of economic value.</p>
	<p><i>Tuition and Fees—</i></p> <p>Tuition and fees received through the scholarship program for participating students shall not exceed tuition and fees charged to enrolled students not participating in the program. Tuition and fees shall be defined as the total payment charged to enrolled students not participating in the scholarship program, and paid on behalf of those students. Scholarship funds may not be used to pay tuition and fees for students not participating in the scholarship program.</p>
	<p><i>Annual Independent Scholarship Audit—</i></p> <p>The LDE shall publish guidance as to the contents of the annual independent scholarship audit so as to ensure compliance with the limits entailed in the law. The audit shall address rules of financial practice contained in this bulletin. Failure to correct violations of the rules contained in this bulletin, or evidence of gross fiscal irresponsibility, may result in penalties including the school being declared ineligible to participate. Schools that do not obtain an audit or do not submit the audit according to a timeline established by the LDE may incur penalties including being declared ineligible to participate.</p>
Student Mobility	In participating schools, the LDE may investigate instances in which the rate of students remaining enrolled from the beginning of one school year to the next school year falls short of the average of all participating schools by a significant percentage. Schools with exaggerated, repeated, or uncorrected patterns of low relative rates of continued enrollment may be instructed to enroll no new students for one year or to fully end participation.
Health, Safety and Welfare of Students	Participating schools shall be in compliance with all federal, state, and local laws and regulations pertaining to the health, safety, and welfare of students for public or nonpublic schools, as applicable.
	<p>Participating schools shall not have an employee, or any person having supervisory or disciplinary authority over children, who has been convicted of or pled nolo contendere to any crime listed in R.S. 15:587.1(C) except R.S. 14:74 or has been convicted under the laws of any state or of the United States or of any foreign government or country of a crime which, if committed in Louisiana, would be an R.S. 15:587.1 crime.</p> <p>The state superintendent may immediately declare a school ineligible to participate if the school’s continued participation endangers the academic welfare, health, or safety of children.</p>

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE Promulgated by the Board of Elementary and Secondary Education, LR 38:

**§1305. Accountability System for Participating Nonpublic Schools**

A. Accountability criteria shall serve the goal of ensuring the public trust that all schools participating promote student achievement.

B. Within the accountability system, the state superintendent may adjust individual numeric performance targets and thresholds to accommodate changing policies and circumstances outside the accountability system.

C. Because some schools are larger participants than others in the program, and thus take on a larger share of the public trust, accountability criteria shall vary depending on the number of scholarship students enrolled in the school as of October 1 of each academic year, as follows.

D. As nonpublic schools approved by the board in accordance with Article 8, Section 4 of the Louisiana State Constitution, all participating schools shall continue to demonstrate a sustained curriculum of quality at least equal to that prescribed for similar public schools. In accordance with R.S. 17:11, the LDE will periodically determine whether the nonpublic school is maintaining such quality.

Number of Participating Students	Means of Academic Numeric Measurement and Reporting
Average of 0-9.9 participating students per K-12 grade in the school and fewer than 40 students enrolled in tested grades	Per state and federal law, state test scores will be reported publicly for the entirety of the scholarship program student cohort if the school has 10 or more participating students taking tests, as well as for any grade level with 10 or more participating students taking tests.
Average of ≥10 participating students per K-12 grade in the school or 40 or more students enrolled in tested grades	Per state and federal law, state test scores will be reported publicly for the entirety of the scholarship program student cohort if the school has 10 or more participating students taking tests, as well as for any grade level with 10 or more participating students taking tests.  A Scholarship Cohort Index, calculated in a manner that is substantially similar to the school performance score outlined in Bulletin 111 and is based on state assessments of student learning, shall be produced after the school year in which assessments were taken. The scholarship Cohort Index will measure only students in the scholarship program rather than the school as a whole.

**E. Nonpublic Schools that Receive Scholarship Cohort Indexes**

1. There shall be two fundamental rules of the accountability system for participating nonpublic schools that receive Scholarship Cohort Indexes. Starting with the 2012-2013 school year:

a. Scholarship Cohort Indexes will be released after the school year on which they are based. If the school receives a Scholarship Cohort Index below 50 in the second year of participation or in any year thereafter (on a scale of 150), the school shall not enroll additional scholarship recipients for the next school year. Students attending a participating school that receives a score below 50 in any

year shall have priority admission to attend another participating school the following year;

b. following four school years of program participation, and in any period of four school years thereafter, if the participating school has scored below 50 for the majority of years in which it received a Scholarship Cohort Index, the school shall be able to enroll new scholarship recipients only after achieving a score greater than 50 and a satisfactory quality review by the LDE.

2 The following exceptions shall exist.

a. The state superintendent shall waive both of the provisions in Paragraph 1 of this Subsection for a given school if likely new enrollees otherwise would predominantly be enrolled in schools performing at levels lower than or equivalent to the participating school.

b. The state superintendent may waive either or both of the above provisions for a given school if the school has improved by more than 15 points on the Scholarship Cohort Index over the last four school years, with the 2012-2013 school year being the first such year.

3. In accordance with the Louisiana Constitution, the board shall ensure that approved nonpublic schools maintain a curriculum of quality at least equal to that prescribed for similar public schools and periodically determine whether the nonpublic school is maintaining such quality. If, in the process of such a periodic review, or at any other time, a participating school is found to have demonstrated gross or persistent lack of basic academic competence, the school may incur penalties including ineligibility to participate or ineligibility to accept new students.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:6 and R.S. 17:4025.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

#### **Family Impact Statement**

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

#### **Small Business Statement**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not

expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Public Comment**

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., October 20, 2012 to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 133—Scholarship Programs**

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

The proposed policy establishes criteria for school participation in the Student Scholarship for Educational Excellence Program and lists details for the accountability system for participating nonpublic schools. There will be no implementation costs for the Department of Education to create the accountability system for participating nonpublic schools. The accountability system will be overseen by existing Department personnel. While students receiving the scholarships will be required to participate in mandatory state testing, such testing would have been given to students had they remained in public school, making this testing cost-neutral.

The Department of Education will hire an auditor to conduct independent audits of the participating nonpublic schools to address rules of financial practice according to the guidelines of the program. The Department is working on an estimate for the contract which will be paid for with state general fund dollars currently budgeted in the Department of Education. There will also be a cost of \$700 to print and disseminate the proposed policy.

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

This policy will have no effect on revenue collections.

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

This policy will have no effect on costs and/or economic benefits to directly affected persons or non-governmental groups. The financial impact to participating nonpublic schools in the Student Scholarships for Excellence Program has been addressed in the Impact Statement dated July 2012 when the initial policy for Bulletin 133 was created.

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

This policy will have no effect on competition and employment.

Beth Scioneaux  
Deputy Superintendent  
1209#018

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

#### Regulatory Permit for Flaring of Materials Other than Natural Gas (LAC 33:III.319)(AQ322)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.319 (AQ322).

This Rule will provide for a regulatory permit which will authorize air emissions from the flaring of materials other than natural gas (e.g., propane, ethylene, propylene, ammonia). The authorization will become effective only upon notification by the department that the application required by the regulatory permit has been determined complete. R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019—Promulgation of Rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rationale for this Rule are to establish a regulatory permit to authorize air emissions from the flaring of materials other than natural gas (e.g., propane, ethylene, propylene, ammonia). This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

#### Title 33

#### ENVIRONMENTAL QUALITY

#### Part III. Air

#### Chapter 3. Regulatory Permits

#### §319. Regulatory Permit for Flaring of Materials Other than Natural Gas

##### A. Applicability

1. This regulatory permit authorizes the flaring of gaseous materials other than natural gas (e.g., propane, ethylene, propylene, ammonia) resulting from metering, purging, and maintenance operations, subject to the requirements established herein, upon notification that the department has determined the application (i.e., notification form) submitted in accordance with Subsection G of this Section to be complete. The material to be flared may be supplemented with natural gas.

2. The material to be flared must have a higher heating value greater than or equal to 300 Btu per standard cubic foot.

B. The flare must be capable of accommodating the maximum amount of material to be combusted at any point during the flaring event.

##### C. Opacity

1. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions

may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

2. Particulate Matter. The emission of particulate matter shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

3. Emissions of smoke or suspended particulate matter that pass onto or across a public road and create a traffic hazard by impairment of visibility, as defined in LAC 33:III.111, or intensify an existing traffic hazard condition are prohibited.

4. The owner or operator of the flare shall conduct a 6-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, upon request of the department. Results shall be kept on-site and available for inspection by the Office of Environmental Compliance.

D. The authorization for the flaring event associated with the specific metering, purging, or maintenance operation addressed by the application submitted in accordance with Subsection G of this Section shall remain effective for 60 days following the date on which the department determines that the application is complete.

E. Flaring events with a duration of more than 10 calendar days shall not be authorized by this regulatory permit and must be approved separately by the department.

F. When an ozone action day has been declared by the department, flaring of ethylene or propylene shall be restricted to between the hours of 4 p.m. and 10 a.m.

##### G. Notification Requirements

1. The following information shall be submitted to the Office of Environmental Services using the appropriate form provided by the department:

- a. name of the owner or operator;
- b. material to be flared;
- c. estimated volume of the material to be flared;
- d. reason for the flaring event;
- e. physical location;
- f. date(s) and expected duration of the flaring event; and

g. estimated emissions of criteria pollutants and toxic air pollutants (TAPs) associated with the flaring event. TAPs are listed in LAC 33:III.5112, Tables 51.1 and 51.3.

2. A copy of the notification required by Paragraph G.1 of this Section shall be submitted to the appropriate DEQ Regional Office.

3. A separate notification shall be submitted for each flaring event.

##### H. Monitoring, Recordkeeping, and Reporting

1. The volume of material combusted during the flaring event shall be monitored using a flow meter.

2. The following information shall be recorded and submitted to the Office of Environmental Services no later than 30 calendar days after completion of the flaring event:

- a. date(s) and duration of the flaring event;
- b. actual volume of material flared; and
- c. actual criteria pollutant and TAP emissions associated with the flaring event.

I. In accordance with LAC 33:III.223, Table 1, the fee for this regulatory permit shall be \$300 (fee number 1710).

There shall be no annual maintenance fee associated with this regulatory permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 38:

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ322. Such comments must be received no later than November 7, 2012, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ322. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

**Public Hearing**

A public hearing will be held on October 31, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

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

**RULE TITLE: Regulatory Permit for Flaring of Materials Other than Natural Gas**

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

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed Rule. The proposed Rule creates a new regulatory permit which authorizes the flaring of materials other than natural gas (e.g., propane, ethylene, propylene, ammonia). The regulatory permit requires applicants to submit a notification form in lieu of a generic permit application. The authorization to emit air emissions pursuant to the provisions of this regulatory permit will become effective only upon notification by the Department

of Environmental Quality that the application (i.e., notification form) required by the regulatory permit has been determined complete.

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

No increase or decrease in revenues to state or local governmental units will be realized. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to submit "any fee authorized by this Subtitle and applicable regulations to the secretary... in lieu of submission of a permit application." This fee of \$300 is equivalent to, and in place of, that which would have been required had a permit been applied for and processed pursuant to LAC 33:III.501 or if another approval mechanism (e.g., a variance) had been employed to authorize air emissions from the source or activity in question.

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

Owners or operators of pipelines or industrial facilities seeking approval to flare a material other than natural gas will be affected by the proposed Rule. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to "submit a written notification in lieu of submission of a permit application." However, this notification form will be specifically tailored to the activity addressed by the regulatory permit (i.e., flaring of material other than natural gas) and used in place of the traditional, more generic permit application documents. The fee for this regulatory permit is \$300, which is equivalent to the permit application fee normally associated with requests to flare a material other than natural gas. Therefore, there will be no increase in costs to applicants seeking coverage under this regulatory permit.

Use of a notification form specifically tailored to the activity addressed by this regulatory permit should facilitate the department's review of such documents. A final decision on proposed projects should be reached more expeditiously, possibly resulting in economic benefits to applicants.

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

There will be no effect on competition or employment in the public or private sector.

Herman Robinson, CPM  
Executive Counsel  
1209#033

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Real Estate Commission**

Real Estate Schools, Vendors, Post-Licensing and Continuing Education (LAC 46:LXVII.5319, 5513, 5515, 5523, 5527, 5529 and 5531)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII, Real Estate, Chapters 53 and 55.

A pre-license instructor certification will no longer serve to automatically qualify pre-license instructors to instruct post-license and continuing education courses. Post-license and continuing education instructors will no longer be certified by the LREC, and will forego the cost of the certification exam. All instructors, including certified pre-



license instructors, will be required to submit an application for approval to instruct post-license or continuing education per course, which will be graded by an LREC-developed point system. Unlike the current procedure, which effectively grandfathers pre-license instructors to teach post-license and continuing education with no qualifying requirements, the amended procedure is designed to ensure that post-license and continuing education instructors possess the knowledge and skills to teach courses of this type.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXVII. Real Estate**  
**Subpart 1. Real Estate**

**Chapter 53. Real Estate Schools**

**§5319. Pre-License Instructors; Initial and Renewal Applications; Guest Lecturers**

A. No person shall act as pre-license instructor at any real estate school, and no real estate school shall hire or otherwise permit any person to act as a pre-license instructor for the school, unless that person has been certified as such by the commission.

B. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3015 (October 2011), amended LR 38:

**Chapter 55. Real estate vendors; post-licensing and continuing education**

**§5513. Post-License and Continuing Education Instructors**

A. No person shall act as a post-license/continuing education instructor, and no real estate vendor shall hire or otherwise permit any person to act as a post-license/continuing education instructor, unless that person has been approved by the commission.

B. The application to become approved as a real estate post-license/continuing education instructor shall be in such form and detail as prescribed by the commission and shall be accompanied by any documentation requested therein and the certification fee(s) prescribed in R.S. 37:1443.

1. Approval as a post-license/continuing education instructor shall be required per vendor course and shall not qualify an approved instructor to instruct any other post-license/continuing education courses.

2. The expiration of an approved post-license/continuing education course shall result in the automatic expiration of all instructor approvals issued for that course.

C. The commission shall approve or deny a post-license/continuing education instructor application within 45 calendar days after it is received. Incomplete applications, or a request from the commission for additional information, may be cause for delay beyond 45 calendar days.

D. The commission may deny an application for approval as a post-license/continuing education instructor for any of the following reasons.

1. The applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has

been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction.

2. An application contains a false statement of material fact.

3. A professional license or certification held by an applicant has been revoked.

4. The applicant fails to meet the minimum requirements prescribed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3020 (October 2011), amended LR 38:

**§5515. Supplemental Post-License/Continuing Education Instructors**

A. Real estate vendors may hire or otherwise permit a supplemental course instructor to participate with a primary instructor in the instruction of an approved post-license/continuing education course, provided the supplemental course instructor is named as such in the application for post-license/continuing education instructor submitted by the primary instructor.

B. A supplemental course instructor shall work under the direct supervision of the approved primary course instructor and shall be limited to no more than 25 percent of the total course instruction. In instances where there is more than one supplemental course instructor, the supplemental course instructors shall be limited to a combined total of no more than 25 percent of the total course instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3020 (October 2011), amended LR 38:

**§5523. Suspension or Revocation of a Vendor Certification or Post-License/Continuing Education Instructor Approval**

A. The commission may impose fines, and/or suspend or revoke a vendor certification and/or post-license/continuing education instructor approval for the following acts committed by a vendor, employee, or approved post-license/continuing education instructor:

1. violation of any rule or regulation promulgated by the commission;

2. conviction of a felony or entering a plea of guilty or nolo contendere to a felony charge;

3. refusal to appear or testify under oath at any hearing held by the commission;

4. false certification of course attendance hours for any student;

5. suspension or revocation of a salesperson, broker, or timeshare interest salesperson license by the commission;

6. failure of a real estate vendor contact person to inform post-license/continuing education instructors on changes to the Louisiana Real Estate License Law or commission rules and regulations.

7. using designated course instruction time to teach, promote, advance, encourage, or further personal opinion, information, data, statistics, facts, figures, material, news, reports, intelligence, or knowledge that is not included in the approved course curriculum.

B. Suspension or revocation of a post-license/continuing education instructor approval shall include all courses for

which the post-license/continuing education instructor approval has been granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011), amended LR 38:

#### **§5527. Post License Education Courses**

A. Post-license education courses offered by real estate education vendors shall be developed in accordance with the content outline prescribed by the commission.

B. Real estate education vendors shall not issue credit for any post-license education course unless the student has passed an examination on the course content. Post-license hours shall be secured through and reported by one approved vendor.

C. Post-license education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3021 (October 2011), amended LR 38:

#### **§5529. Continuing Education Courses**

A. Real estate education vendors may offer continuing education course topics that include, but are not limited to, appraisal, finance, taxes, zoning, Louisiana Real Estate License Law/commission rules and regulations, environmental quality, property management, and federal laws affecting real estate such as HUD and fair housing regulations.

B. Continuing education courses offered by real estate education vendors shall be a minimum of two hours. A classroom hour is defined as sixty minutes, of which fifty minutes are instruction. The prescribed number of classroom hours may include time devoted to examinations if a required part of the course. Time devoted to breakfasts, luncheons, dinners, or other refreshments shall not be counted as instruction time.

C. Licensees shall not receive duplicate credit for attending the same continuing education course from the same vendor in the same year. It shall be the responsibility of the real estate education vendor to advise licensees that credit shall not be awarded for completing duplicate courses within the same license period.

D. Course work completed by licensees through non-approved providers will be considered for credit by the commission on an individual basis. Licensees seeking approval for course work obtained through non-approved providers shall apply for such approval by submitting documentation of attendance, hours completed, date of attendance, and detailed course content information.

E. Continuing education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011), amended LR 38:

#### **§5531. Mandatory Courses**

A. The commission shall mandate an annual four-hour continuing education course topic and curriculum that licensees shall complete during each license period as a requirement for license renewal.

B. Real estate education vendors shall not offer the mandatory course for credit unless a course approval application has been approved by the commission.

C. There shall be no substitute curriculum for the mandatory course, including any previously approved course that is similar in name and/or content, without prior commission approval.

D. Any instructor used in the presentation of the mandatory course shall have first completed the annual Train the Trainer instructor workshop developed specifically for each mandatory course topic. Completion of a prior year Train the Trainer instructor workshop shall not be substituted for completion of the current year workshop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 37:3022 (October 2011), amended LR 38:

#### **Family Impact Statement**

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following family impact statement is submitted with the Notice of Intent for publication in the September 20, 2012 *Louisiana Register*: The proposed Rule has no known impact on family, formation, stability, or autonomy.

#### **Public Comments**

Interested parties are invited to submit written comments on the proposed regulations through October 4, 2012 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst  
Executive Director

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

#### **RULE TITLE: Real Estate Schools, Vendors, Post-Licensing and Continuing Education**

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

There are no implementation costs (savings) to state or local governmental units as a result of the proposed rule change. The proposed rule change removes the blanket approval given to pre-license instructors to instruct post-license and continuing education courses, without documentation or evidence that they possess the knowledge and skill to teach a topic outside the pre-license education category.

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

The effect on revenue collections of state governmental units is indeterminable due to the proposed rule change. Unlike the annual renewal of licenses, registrations, and certificates, the \$25 application fee for post-license and continuing education instructors will cover a three-year period. In addition, it is not known how many applications instructors will submit.

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

Post-license and continuing education instructor applicants will no longer be certified by the Louisiana Real Estate Commission, and will forgo the cost of the certification exam. These instructors will instead submit an application to instruct per course, which will be graded by a Louisiana Real Estate Commission-developed point system. The total cost will be determined by the number of applications an instructor elects to

submit, at \$25 per application. Unlike the current procedure, which effectively grandfathers pre-license instructors to teach post-license and continuing education with no qualifying requirements, the amended procedure is designed to ensure that post-license and continuing education instructors possess the knowledge and skills to teach courses of this type. Real Estate students and the general public that will eventually use their services in real estate transactions, will benefit from having qualified post-license and continuing education instructors in the classroom.

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

There is no estimated effect on competition and employment. The Louisiana Real Estate Commission-developed point system use to grade post-license and continuing education instructor approval applications will be applied in a consistent and equitable manner.

Bruce Unangst  
Executive Director  
1209#034

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Dentistry

Continuing Education, Licensure  
Examinations and Criminal History Records  
(LAC 46:XXXIII.1613, 1709 and 1809)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.1613, 1709, and 1809. The Louisiana State Board has extended to dental hygienists the ability to obtain continuing education credits for pro bono work (§1613). Next, the board is clarifying that the failure of a clinical licensing examination prior to an applicant's final year of dental school does not count towards the three failure limit in this rule (§1709). Finally, the board is eliminating licensure applicant's obligation to submit separate payment for the FBI and bureau for fingerprint background checks (§1809).

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Profession

#### Chapter 16. Continuing Education Requirements

#### §1613. Continuing Education Requirements for Relicensure of Dental Hygienists

A. - K. ...

L. Louisiana licensed dental hygienists shall be eligible for two hours of clinical continuing education for treating a donated dental service patient (pro bono) from a Louisiana State Board of Dentistry approved agency. The maximum number of hours will be no more than four in any two year biennial renewal period, and verification of treatment from the agency is mandatory in order to obtain these continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 24:1118 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:245 (February 2006), LR 35:1237 (July 2009), LR 36:2039 (September 2010), LR 38:

#### Chapter 17. Licensure Examinations

#### §1709. Examination of Dentists

A. - F. ...

G. Notwithstanding any other law to the contrary or any examination manual of any of the testing agencies listed in Subsection C of this Section, no candidate for licensure in the state of Louisiana will be granted same if said candidate has failed any clinical licensing examination for a total of three times. This number includes the accumulation of all examinations taken regardless of the testing agency. This number excludes failures of clinical examinations taken prior to an applicant's final year of dental school. A make-up examination counts as an examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:

#### Chapter 18. Criminal History Records Information

#### §1809. Procedural Requirements

A. - A.1. ...

2. a check in the amount of no less than \$100 in satisfaction of the fees and costs incurred by the board to process fingerprint cards and to request and to receive criminal history record information.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(6), (8) and 37:763.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 28:1779 (August 2002), amended LR 38:

#### Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

#### Public Comments

Interested persons may submit written comments on this proposed Rule to Peyton B. Burkhalter, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 20 days of the date of the publication of this notice.

#### Public Hearing

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of the publication of this notice.

Peyton B. Burkhalter  
Executive Director

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

**RULE TITLE: Continuing Education, Licensure  
Examinations and Criminal History Records**

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

There will be a one-time cost of \$500 in FY 13 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rule changes.

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

There will be no effect on revenue collections by the board as a result of the proposed rule changes.

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

Under .1613, dental hygienists may substitute a maximum of 4 hours of clinical continuing education credits in a biennial period with pro bono clinical services provided to Donated Dental Service patients. As a result, hygienists will be able to avoid fees associated with some clinical continuing education courses.

In addition, under .1809, applicants for licensure will no longer be required to pay \$34 in separate fees to the FBI and the Louisiana Bureau of Criminal Identification with State Police (LSP) for fingerprinting and background checks. Currently, the Board collects an additional \$100 fee from applicants for this purpose. Instead of using the \$34 in separate checks to the FBI and LSP, the Board has used its \$100 fee to pay LSP and the FBI for these services for several years. As such, the rule revision will align with the Board's current practices.

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

There is no estimated effect on competition and employment as a result of the proposed rule changes.

Peyton B. Burkhalter  
Executive Director  
1209#041

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Dentistry**

**Licensure by Credentials  
(LAC 46:XXXIII.306, 307, 706 and 707)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.306, 307, 706, and 707. The Louisiana State Board of Dentistry is reorganizing these rules for clarity. In addition, the board is clarifying the specific requirements to obtain a licensure by credentials and requiring licensees who obtain a license by credentials to establish a practice location in Louisiana and actively practice in Louisiana (§306). Finally, the board is adding additional criteria that the board shall use in evaluating applicants for licensure by credentials.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXIII. Dental Health Profession**

**Chapter 3. Dentists**

**§306. Requirements of Applicants for Dental  
Licensure by Credentials**

A. The board may issue a license by credentials in lieu of an examination administered by a board approved clinical licensing examination agency provided that the applicant provides to the board satisfactory documentation evidencing that the applicant:

1. meets all requirements set forth in R.S. 37:761 and 37:768, and LAC 46:XXXIII.103 and 1805;

2. has satisfactorily passed an examination administered by the Louisiana State Board of Dentistry testing the applicant's knowledge of the Louisiana Dental Practice Act and the jurisprudence affecting same;

3. currently possesses a nonrestricted license in another state as defined in R.S. 37:751(A)(1);

4. has been in active practice, while possessing a nonrestricted license in another state, by:

a. working full-time as a dentist at a minimum of 1,000 hours per year for the preceding three years before applying for licensure in Louisiana; or

b. working full-time in dental education as a teacher for a minimum of three years immediately prior to applying for licensure in Louisiana; or

c. having successfully completed a two-year general dentistry residency program, and applying for a Louisiana dental license by credentials within 180 days of his completion of the program; or

d. having successfully completed a residency program in one of the board recognized dental specialties as defined in §301, and applying for a Louisiana dental license by credentials within 180 days of his completion of the program.

5. successfully completed an initial licensure examination that included procedures on a live patient;

6. has not failed any clinical licensure examination a total of three or more times. This number includes the accumulation of all examinations taken regardless of the testing agency. This number excludes failures of clinical examinations taken prior to an applicant's final year of dental school. A make-up examination counts as an examination;

7. is endorsed as being in good standing by the state board of dentistry in the state of current practice and all prior states of licensure and practice;

8. has no pending criminal charges against him/her;

9. has paid all nonrefundable costs and fees;

10. has fully completed the required application form with all supporting data and certification of competency and good character;

11. has submitted Drug Enforcement Administration registration certificate number and state narcotics license number in all states wherein same are held or have been held;

12. has submitted one recent passport type color photograph;

13. has accounted for all units of time since graduation from dental school;

14. has furnished three affidavits of recommendation from professional associates (unrelated to the applicant) who have knowledge of the applicant's ability to practice dentistry after the applicant's graduation from dental school;

15. has no physical or psychological impairments which would, in the judgment of the board, adversely affect his/her ability to practice dentistry;

16. has completed continuing education in compliance with the rules of all states in which he is currently licensed and practicing;

17. has, if deemed necessary by the board, appeared for a personal interview before the board;

18. has shown or provided a sworn affidavit that there are no unresolved complaints against him/her;

19. has provided satisfactory explanation of any and all malpractice insurance payments made on the behalf of the applicant or any of the applicant's employers; and

20. has shown that his/her professional liability insurance has never been revoked, modified, or nonrenewed.

B. Licensure by credentials shall be granted subject to the provisions of §307.A.

C. The holder of a license issued under this section shall establish a practice location and actively practice dentistry, as defined in R.S. 37:751, in Louisiana within one year from the date the license is issued. The license issued under this section shall be void upon a finding by the board that the licensee fails to limit the licensee's practice to Louisiana or that the licensee no longer actively practices dentistry in Louisiana. However, when a dentist licensed under this section faces possible board action to void the dentist's license for failure to limit the dentist's practice to Louisiana, if the dentist demonstrates to the board that out-of-state practice actions were in connection with formal contract or employment arrangements for the dentist to provide needed clinical dental care to patients who are part of an identified ethnic or racial minority group living in a region of the other state with low access to dental care, the board, in its discretion, may waive the in-state limitations on the out-of-state practice for a maximum of 12 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:67 (January 2009), amended LR 37:1405 (May 2011), LR 37:3515 (December 2011), repromulgated LR 38:355 (February 2012), amended LR 38:

**§307. Criteria to be Utilized to Determine Professional Competence, Conduct and Ethics of an Applicant Seeking Licensure by Credentials**

A. - A.2. ...

3. drug testing if reasonable cause is presented;

4. background check for criminal or fraudulent activities or conduct reflecting upon one's professional conduct or ability;

5. the board reserves the right to conduct investigations into any and all information provided to satisfy statutory or regulatory requirements for licensure by credentials.

B. Regardless of the applicant's compliance with the foregoing and the requirements listed in §306, the board may refuse to issue a dental license based on the applicant's credentials for any of the following:

1. any material misrepresentation or omission in the application; or

2. any disciplinary action or sanctions taken against an applicant's license in another jurisdiction; or

3. any reason listed in R.S. 37:775 or R.S. 37:776.

C. False or fraudulent statements or material omission will result in suspension or revocation of licensure if discovered after issuance of a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:740 (July 1992), amended LR 38:

**Chapter 7. Dental Hygienists**

**§706. Requirements of Applicants for Licensure by Credentials (Hygienists)**

A. The board may issue a license by credentials in lieu of an examination administered by a board approved clinical licensing examination agency provided that the applicant provides to the board satisfactory documentation evidencing that the applicant:

1. meets all requirements set forth in R.S. 37:764 and 37:768, and LAC 46:XXXIII.103 and 1805;

2. has satisfactorily passed an examination administered by the Louisiana State Board of Dentistry testing the applicant's knowledge of the Louisiana Dental Practice Act and the jurisprudence affecting same;

3. currently possesses a nonrestricted license in another state as defined in R.S. 37:751(A)(1);

4. has been in active practice, while possessing a nonrestricted license in another state, by:

a. working full-time as a dental hygienist at a minimum of 1,000 hours per year for the preceding year before applying for licensure in Louisiana; or

b. working full-time in dental hygiene education as a teacher for a minimum of one year immediately prior to applying for licensure in Louisiana;

5. successfully completed an initial licensure examination that included procedures on a live patient;

6. has not failed any clinical licensure examination a total of three or more times. This number includes the accumulation of all examinations taken regardless of the testing agency. A make-up examination counts as an examination;

7. is endorsed as being in good standing by the state board of dentistry in the state of current practice and all prior states of licensure and practice;

8. has no pending criminal charges against him/her;

9. has paid all nonrefundable costs and fees;

10. has fully completed the required application form with all supporting data and certification of competency and good character;

11. has submitted one recent passport type color photograph;

12. has accounted for all units of time since graduation from dental hygiene school;

13. has furnished three affidavits of recommendation from professional associates (unrelated to the applicant) who have knowledge of the applicant's ability to practice dental hygiene after the applicant's graduation from dental hygiene school;

14. has no physical or psychological impairments which would, in the judgment of the board, adversely affect his/her ability to practice dentistry;

15. has completed continuing education in compliance with the rules of all states in which he is currently licensed and practicing;

16. has, if deemed necessary by the board, appeared for a personal interview before the board;

17. has shown or provided a sworn affidavit that there are no unresolved complaints against him/her;

18. has provided satisfactory explanation of any and all malpractice insurance payments made on the behalf of the applicant or any of the applicant's employers; and

19. has shown that his/her professional liability insurance has never been revoked, modified, or nonrenewed.

B. Licensure by credentials shall be granted subject to the provisions of §707.A.

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8) and R. S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:1117 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 28:1778 (August 2002), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 38:

**§707. Criteria to be Utilized to Determine Professional Competence, Conduct and Ethics of an Applicant Seeking Licensure by Credentials**

A. - A.2. ...

3. drug testing if reasonable cause is presented;

4. background check for criminal or fraudulent activities or conduct reflecting upon one's professional conduct or ability;

5. the board reserves the right to conduct investigations into any and all information provided to satisfy statutory or regulatory requirements for licensure by credentials.

B. Regardless of the applicant's compliance with the foregoing and the requirements listed in §706, the board may refuse to issue a dental hygiene license based on the applicant's credentials for any of the following:

1. any material misrepresentation or omission in the application; or

2. any disciplinary action or sanctions taken against an applicant's license in another jurisdiction; or

3. any reason listed in R.S. 37:775 or R.S. 37:777.

C. False or fraudulent statements or material omission will result in suspension or revocation of licensure if discovered after issuance of a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:738 (July 1992) amended LR 38:

**Family Impact Statement**

There will be no family impact in regard to issues set forth in R.S. 49:972.

**Public Comments**

Interested persons may submit written comments on these proposed Rule changes to Peyton B. Burkhalter, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 25 days of the date of the publication of this notice.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of the publication of this notice.

Peyton B. Burkhalter  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Licensure by Credentials**

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

There will be a one-time cost of \$500 in FY 13 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rule changes.

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

There will be no effect on revenue collections by the board as it relates to the changes to LAC 46:XXXIII.306, 307, 706, and 707, which are primarily rewritten for clarification purposes regarding dental and hygienist licensure by credentials.

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

Under section .306, the only addition to the requirements for licensure by credentials for dentists includes the mandate that a licensee shall establish an active practice, limited to Louisiana, within one year from licensure by credentials. Failure to do so without a waiver from the Board will result in revocation of the license. Depending on the licensee's scope of practice in Louisiana, this could result in an indeterminable amount of lost revenues.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule changes.

Peyton B. Burkhalter  
Executive Director  
1209#042

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Dentistry

Restrictive License; Fees, Sedation,  
Educational Requirements, Facilities and Exceptions  
(LAC 46:XXXIII.415, 1505, 1506, 1509, 1511 and 1513)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.415, 1505, 1506, 1509, 1511 and 1513.

The Louisiana State Board of Dentistry is changing the nomenclature in the sedation rule, R.S. 37:793, to comply with the changes in Act 485 of the 2012 Legislative Session. In addition, the board is changing fees for the issuance of a restricted license.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXXIII. Dental Health Profession

#### Chapter 4. Fees and Costs

#### Subchapter C. Fees for Dentists

#### §415. Licenses, Permits, and Examinations (Dentists)

A. - A.2. ...

3. Issuance of a restricted dental license (excluding advanced education students and dental residents)—\$200

4. - 18. ...

19. Application and permitting for enteral moderate sedation office permit—\$100

20. Application and permitting for enteral moderate sedation personal permit—\$100

21. Renewal of enteral moderate sedation permit for adult patients—\$50

22. Renewal of enteral moderate sedation permit for pediatric patients—\$50

23. - 24. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 37:2150 (July 2011), LR 37:3515 (December 2011) repromulgated LR 38:356 (February 2012), amended LR 38:

#### Chapter 15. Anesthesia/Analgesia Administration

#### §1505. Moderate Sedation with Parenteral Drugs

A. The board shall issue two types of moderate sedation with parenteral drugs permits.

A.1. - B.1. ...

2. utilization of the services of a third-party medical doctor or doctor of osteopathy, who specializes in anesthesiology, third-party certified registered nurse anesthetist, or an oral and maxillofacial surgeon who is permitted by the board to administer moderate sedation,

deep sedation, and general anesthesia provided that the third-party anesthetist must remain on the premises of the dental facility until any patient given parenteral drugs is sufficiently recovered; or

B.3. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 33:2653 (December 2007), LR 38:1958 (August 2012), LR 38:

#### §1506. Moderate Sedation with Enteral Drugs

A. In order to administer enteral moderate sedation, the dentist shall:

1. - 4. ...

B. Drugs for enteral moderate sedation must be administered in a dental office and the patient must be observed by a qualified office staff member with training and credentials to perform the specific tasks concomitant with the procedure being administered. Continuous monitoring with pulse oximetry must be initiated with early signs of moderate sedation and continued until the patient is alert. A precordial, pretracheal stethoscope must be available to assist intraoperatively in the monitoring of heart and respiratory rates. A sphygmomanometer shall be immediately available and utilized as needed throughout the procedure. Drugs for anxiety may be administered off premises prior to the dental procedure.

C. For those licensees who have received permits to administer pediatric enteral moderate sedation prior to the effective date of this Rule, said licensee shall satisfactorily complete a board approved course in the administration of pediatric enteral moderate sedation before the permit is renewed concurrently with the license renewal. However, a grace period of 180 days after the renewal of one's license shall be granted to the licensee if good cause can be shown that a course was not available.

D. ...

E. For adult patients, the licensee must provide proof of current certification in advanced cardiac life support as defined by the American Heart Association or its equivalent. For pediatric patients, the licensee must provide proof of current certification in pediatric life support (PALS), or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8) and R.S. 37:793.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 30:2306 (October 2004), amended LR 32:244 (February 2006), LR 33:847 (May 2007), LR 33:2653 (December 2007), LR 38:1958 (August 2012), LR 38:

#### §1509. Minimal Educational Requirements for the Granting of Permits to Administer Nitrous Oxide Inhalation Analgesia, Moderate Sedation with Parenteral Drugs and General Anesthesia/Deep Sedation

A. - A.3. ...

B. Moderate Sedation with Parenteral Drugs

1. To be granted a moderate sedation with parenteral drugs permit, the applicant's training must be personally attended. Online or correspondence courses are not acceptable.

2. ...

3. To be granted a "full" permit, the applicant must submit verification of successful completion of formal post-doctoral training in the use of parental drugs via the intramuscular (IM), submucosal (SM), intranasal (IN), subcutaneous (SC), and moderate IV sedation routes of administration and competency to handle all emergencies relating to parenteral sedation providing such program consists of a minimum of 60 hours of instruction and 100 hours of clinical experience which includes at least 20 documented cases of parenteral sedation.

C. Moderate Sedation with Enteral Drugs

1. To be granted a moderate sedation with enteral drugs permit, the applicant's training must be personally attended. Online or correspondence courses are not acceptable.

2. To be granted an unrestricted (adults and children) permit to administer moderate sedation with enteral drugs, the applicant must submit verification of successful completion of formal post-doctoral training in the use of enteral moderate sedation on both pediatric and adult patients or satisfactory completion of a board approved course which includes a minimum of 16 hours of didactic training and a component on handling emergencies incident to the administration of moderate sedation.

3. To be granted a restricted permit (adults only) to administer moderate sedation with enteral drugs, the applicant must submit verification of successful completion of formal post-doctoral training in the use of enteral moderate sedation on adult patients or satisfactory completion of a board approved course which includes a minimum of 8 hours of didactic training and a component on handling emergencies incident to the administration of moderate sedation.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 22:1216 (December 1996), LR 32:244 (February 2006), LR 37:590 (February 2011), LR 37:2151 (July 2011), LR 38:1958 (August 2012), LR 38:

**§1511. Required Facilities, Personnel and Equipment for Sedation Procedures**

A. - A.7.d. ...

e. pulse oximeter when parenteral or enteral moderate sedation on a patient is performed.

A.8. - B. ...

1. The authorized dentist must ensure that every patient receiving nitrous oxide inhalation analgesia, moderate sedation with parenteral drugs, deep sedation or general anesthesia is constantly attended.

2. Direct supervision by the authorized dentist is required when nitrous oxide inhalation analgesia, moderate sedation with parenteral drugs, deep sedation or general anesthesia is being administered.

3. ...

4. When moderate sedation with parenteral or enteral drugs is being administered one auxiliary who is currently certified in basic life support must be available to assist the dentist in an emergency.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:659 (June 1994), amended LR 32:244 (February 2006), LR 37:1407 (May 2011), LR 38:

**§1513. Exceptions**

A. The board, based on formal application stating all particulars which would justify the granting of such anesthesia/analgesia permit, may grant a permit authorizing the utilization of nitrous oxide inhalation analgesia, moderate sedation with parenteral drugs, deep sedation or general anesthesia to those licensed dentists who have been using the requested sedation procedures in a competent and effective manner prior to the effective date of this Chapter, but who have not had the benefit of formal training as required in this Chapter or in R.S. 37:793.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:660 (June 1994), amended LR 38:

**Family Impact Statement**

There will be no family impact in regard to issues set forth in R.S. 49:972.

**Public Comments**

Interested persons may submit written comments on this proposed Rule changes to Peyton B. Burkhalter, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 20 days of the date of the publication of this notice.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of the publication of this notice.

Peyton B. Burkhalter  
Executive Director

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

**RULE TITLE: Restrictive License; Fees, Sedation, Educational Requirements, Facilities and Exceptions**

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

There will be a one-time cost of \$500 in FY 13 for publication of the proposed rules in the State Register. There are no estimated costs or savings to local governmental units from the proposed rule changes.

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

Revisions to LAC 46:XXXIII.1505, .1506, .1509, .1511, and .1513 are technical changes to comply with Act 485 of the 2012 Legislative Session. Additional revisions include section 415, which will increase the initial application fee for a restricted license by \$100 (fee will change from \$100 to \$200). As a result, the board will increase revenue by approximately \$1,000 per year (10 restricted licensees x \$100 = \$1,000).



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

Revisions to section .415 will impact restricted licensees by increasing their initial application costs by \$100. Otherwise, there are no other fee changes and no additional impact to directly affected persons as a result of the rule changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of the proposed rule changes.

Peyton Burkhalter  
Executive Director  
1209#040

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Licensure and Certification; Definitions;  
Qualifications for License  
(LAC 46:XLV.303 and 311)

Editor's Note: This Notice of Intent is being repromulgated to correct a printing error that appeared in the table of contents of the July 20, 2012 *Louisiana Register*. The original Notice of Intent may be viewed in the July 20, 2012 *Louisiana Register* on pages 1808-1809. The public comments period has also been extended.

Notice is hereby given that pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Medical Examiners (board) intends to amend its administrative rules governing licensure and certification of physicians. The proposed amendment to §303.A (Definitions) defines the term *primarily engaged*. The proposed amendment to §311.A (Qualifications) requires an applicant for initial medical licensure who otherwise satisfies all of the requirements of §311.A, but who has not been primarily engaged in the practice of medicine, medical education, postgraduate medical education or training for the four years immediately preceding the submission of an application, to successfully complete an assessment examination or such other competency testing or evaluation, monitoring or supervision as may be designated by the board.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions**

**Subpart 2. Licensure and Certification**

**Chapter 3. Physicians**

**Subchapter A. General Provisions**

**§303. Definitions**

A. As used in this Chapter, the following terms shall have the meanings specified:

\* \* \*

*Primarily Engaged*—that activity to which the applicant devotes the majority of his or her time.

\* \* \*

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:1271 and 37:1274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 27:835 (June 2001), LR 31:1582 (July 2005), LR 38:

**Subchapter B. Graduates of American and Canadian  
Medical School and Colleges**

**§311. Qualifications for License**

A. To be eligible for a license, an applicant shall:

1. - 6. ...

7. have been primarily engaged in the practice of medicine, medical education, or postgraduate medical education or training, or any combination of the foregoing, for the four years immediately preceding the date of the submission of an application. An applicant who does not satisfy this requirement, shall demonstrate his or her clinical competency by the successful passage of an assessment examination or such other competency testing or evaluation, monitoring or supervision as may be designated by the board.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 1271, 1272, 1274 and 1275.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 16:513 (June 1990), LR 22:207 (March 1996), withdrawal LR 22:280 (April 1996), amended LR 27:836 (June 2001), LR 31:1583 (July 2005), LR 37:337 (January 2011), LR 38:

**Family Impact Statement**

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

**Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., October 19, 2012.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Robert L. Marier, M.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Licensure and Certification; Definitions;  
Qualifications for License**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
Other than the rule publication costs, the total of which are estimated to be \$274 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Medical Examiners or any state or local governmental unit. In addition, the proposed rule amendments will not result in any increase or reduction in workload or additional paperwork for the Board.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
All fees associated with medical competency testing are paid directly to the entities providing these services. As such, no impact on the Board's revenue collections or those of any other state or governmental unit is anticipated. It is estimated that only a few and infrequent number of applicants may be required to demonstrate medical competency as a result of the proposed amendments (approximately 1 every 2 to 3 years).
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The Board of Medical Examiners proposes to amend LAC Title 46:XLV.303 and .311, by requiring an applicant for a medical license who has not been primarily engaged in the practice of medicine, medical education, or postgraduate medical education or training within the four years immediately preceding the submission of an application, to successfully complete an assessment, examination or such other competency testing, evaluation, monitoring or supervision as may be designated by the Board. The cost of such assessment, testing, monitoring or supervision varies and is established by the organizations and entities offering these services. Therefore, the Board is not in a position to estimate the effect of the proposed amendments in this respect. Otherwise, it is not anticipated that the proposed amendments will have any material effect on costs, paperwork or workload of applicants for initial medical licensure or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
It is not anticipated that the proposed rule amendments will have any significant impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.  
Executive Director  
1209#036

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Physician Assistants, Licensure and Certification;  
Qualifications for Registration of Prescriptive Authority  
(LAC 46:XLV.1521)

Notice is hereby given that pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Physician Assistant Practice Act, R.S. 37:1360.21-1360.38, and in accordance with the provisions of the

Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana State Board of Medical Examiners (board) intends to amend its administrative rules governing the qualifications of physician assistants (PAs) for registration of prescriptive authority. The proposed amendments delete the word "unrestricted" from LAC 46:XLV.1521.A.2, as well as the wording of 46:XLV.1521.C.5, in order to remove certain criteria that may disqualify a PA from obtaining legend or controlled substance prescriptive authority which is not otherwise restricted by a board decision or order. The proposed amendments are set forth below.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions  
Subpart 2. Licensure and Certification  
Chapter 15. Physician Assistants  
§1521. Qualifications for Physician Assistant  
Registration of Prescriptive Authority**

A. Legend Drugs/Medical Devices. To be eligible for registration of prescriptive authority for legend drugs or medical devices, or both, a physician assistant shall:

- 1. ...
- 2. possess a current license to practice as a physician assistant duly issued by the board and not be the subject of a current investigation or pending disciplinary proceeding by the board;

A.3. - B.3. ...

C. A physician assistant shall be deemed ineligible for registration of authority to prescribe controlled substances who:

- 1. - 4. ...
- 5. Repealed and Reserved;

C.6. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6), 1360.23(D) and (F), and 1360.31(B)(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 31:75 (January 2005), amended LR 38:

**Family Impact Statement**

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

**Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., October 19, 2012.

**Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Robert L. Marier, M.D.  
Executive Director

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

**RULE TITLE: Physician Assistants, Licensure  
and Certification; Qualifications for  
Registration of Prescriptive Authority**

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

Other than the rule publication costs, the total of which are estimated to be \$270 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any material costs or savings to the Board of Medical Examiners or any state or local governmental unit.

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

The proposed rule amendments will have no effect on the revenue collections of the Board of Medical Examiners or any other state or local governmental unit.

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

The Board of Medical Examiners proposes two (2) amendments to LAC Title 46:XLV.1521 of its physician assistant ("PA") rules concerning the qualifications for registration of PA prescriptive authority. The amendment to 1521.A.2 allows a PA with a restricted license to remain eligible for legend drug prescriptive authority unless otherwise provided by a Board Decision or Order. Similarly, the amendment to 1521.C.5 removes the automatic disqualification of controlled substance prescriptive authority for a PA whose license has previously been the subject of disciplinary action by the Board or the licensing authority of another state. The amendments may increase receipts and/or income of an estimated 20 directly affected PAs by an indeterminable amount. Otherwise, it is not anticipated that the proposed amendments will have any material effect on receipts, costs, paperwork or workload of the PAs licensed to practice in this state or non-governmental groups.

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

PAs with restricted licenses or whose licenses have previously been the subject of disciplinary action will now be eligible to prescribe legend drugs, controlled substances and medical devices subject to the Board's discretion concerning disciplinary matters. As a result, this may create new employment opportunities or offer competitive advantages for restricted license holders or those with prior disciplinary action by offering additional flexibility in their practice.

Robert L. Marier, M.D.  
Executive Director  
1209#039

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

Physician Licensure and Certification;  
Reports to the Board (LAC 46:XLV.422)

Notice is hereby given that pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1261-1292, and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the

Louisiana State Board of Medical Examiners (board) intends to adopt LAC 46:XLV.422. The Rule requires that a physician who is participating in an accredited program of postgraduate medical training in this state pursuant to a registration, permit or license issued by the board report, and request his or her postgraduate training program to report, to the board in writing the suspension, termination, non-renewal, surrender, resignation or withdrawal of the physician's participation in training within 30 days of such action. The proposed Rule is set forth below.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Professions**

**Subpart 2. Licensure and Certification**

**Chapter 3. Physicians**

**Subchapter I. License Issuance, Termination, Renewal,  
Reinstatement and Exemptions**

**§422. Reports to the Board; Suspension, Termination,  
Non-Renewal, Surrender, Resignation or  
Withdrawal from Postgraduate Medical  
Training**

A. A physician participating in an accredited postgraduate medical training program (program) in this state under the authority of a registration, permit or license issued by the board shall report, and shall request that the program report, to the board in writing his or her suspension, termination, non-renewal, surrender, resignation or withdrawal from the program within thirty days of such action.

B. In the event of a conflict between the reporting requirements of Subsection A of this Section and a physician's duty to self-report under R.S. 37:1285A(31) or a program's duty to report under Louisiana Health Care Professionals Reporting Act, R.S. 37:1745.11-37:1745.17, respectively, the provisions of R.S. 37:1285A(31) and 37:1745.11-37:1745.17, shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, R.S. 37:1285A(31), R.S. 37:1745.11-37:1745.17.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 38:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed rule on the family has been considered. It is not anticipated that the proposed rule will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

**Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed rule to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., October 19, 2012. A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Robert L. Marier, M.D.  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Physician Licensure and Certification;  
Reports to the Board**

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

Other than the Rule publication costs, the total of which are estimated to be \$246 during the current fiscal year, it is not anticipated that the proposed rule will result in any material costs or savings to the Board of Medical Examiners, to state postgraduate medical training programs, or to any other state or local governmental unit.

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

The proposed Rule will have no material effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit.

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

With the adoption of the Rule, physicians who are involved in postgraduate medical training will be required to report to the board in writing, and request that their postgraduate medical training programs also report, their suspension, termination, non-renewal, surrender, resignation or withdrawal from training within 30 days. Physician and program reporting obligations related to impairment are separately regulated by the Louisiana Medicare Practice Act, R.S. 37.1285A(31) and the Louisiana Health Care Professionals Reporting Act, R.S. 37:1745.11-1745.17. While the board has no reliable data, it is anticipated that only a few and infrequent number of physicians will be impacted by the proposed Rule each year (e.g., 25-30 per year). Therefore, it is anticipated that the proposed Rule will have only a minimal effect on receipts, costs, paperwork or workload of physicians or non-governmental groups.

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

It is not anticipated that the proposed Rule will have any impact on competition or employment in either the public or private sector.

Robert L. Marier, M.D.  
Executive Director  
1209#056

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Inpatient Hospital Services  
Non-Rural, Non-State Public Hospitals  
Reimbursement Methodology (LAC 50:V.963)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.963 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.

As a result of a budgetary shortfall in state fiscal year (SFY) 2010, the Department of Health and Hospitals, Bureau of Health Services Financing amended the

provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates for inpatient hospital services rendered by non-rural, non-state hospitals (*Louisiana Register*, Volume 36, Number 11). The November 20, 2010 Rule also amended the reimbursement methodology for inpatient hospital services to establish a Medicaid upper payment limit financing mechanism to provide supplemental payments to hospitals for providing healthcare services to low income and needy patients. The department promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to revise the reimbursement methodology for non-rural, non-state public hospitals (*Louisiana Register*, Volume 37, Number 5).

The department promulgated an Emergency Rule which amended the provisions of the May 15, 2011 Emergency Rule in order to repromulgate these provisions in LAC 50:V.963 to ensure that the provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 38, Number 8). This proposed rule is being promulgated to continue the provisions of the August 1, 2012 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part V. Hospital Services**

**Subpart 1. Inpatient Hospital Services**

**Chapter 9. Non-Rural, Non-State Hospitals**

**Subchapter B. Reimbursement Methodology**

**§963. Public Hospitals**

A. Effective for dates of service on or after May 15, 2011, non-rural, non-state public hospitals shall be reimbursed up to the Medicare inpatient upper payment limits as determined in accordance with 42 CFR §447.272.

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 38:

**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 or autonomy as described in R.S. 49:972.

**Public Comments**

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030. She is responsible for responding to inquiries regarding this proposed Rule.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2012 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.

Bruce D. Greenstein  
Secretary

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

**RULE TITLE: Inpatient Hospital Services  
Non-Rural, Non-State Public Hospitals  
Reimbursement Methodology**

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

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic costs of \$15,753,419 for FY 12-13 \$16,745,396 for FY 13-14 and \$17,247,758 for FY 14-15; however, the state match shall be funded through an intergovernmental transfer of funds from the qualifying hospital to the department to secure federal match to fund the supplemental payments. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 12-13 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 federal revenue collections by approximately \$31,384,159 for FY 12-13 \$31,806,056 for FY 13-14 and \$32,760,238 for FY 14-15. It is anticipated that \$123 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions of the May 15, 2011 and August 1, 2012 emergency rules which amended the provisions governing inpatient hospital services to revise the reimbursement methodology for a non-rural, non-state public hospital (1 qualifying hospital). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$47,137,332 for FY 12-13, \$48,551,452 for FY 13-14 and \$50,007,996 for FY 14-15.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1209#062

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Bureau of Health Services Financing**

Medical Transportation Program  
Non-Emergency Medical Transportation  
Public Transit Services (LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXVII.573 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.

Due to a continuing budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the reimbursement

methodology governing non-emergency medical transportation (NEMT) services in order to reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 10).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Medical Transportation Program in order to provide Medicaid reimbursement for NEMT services rendered by public transit providers (*Louisiana Register*, Volume 37, Number 12). This Emergency Rule is being promulgated to continue the provisions of the December 20, 2011 Emergency Rule.

**Title 50**

**PUBLIC HEALTH—MEDICAL ASSISTANCE**

**Part XXVII. Medical Transportation Program**

**Chapter 5. Non-Emergency Medical Transportation  
Subchapter D. Reimbursement**

**§573. Non-Emergency, Non-Ambulance  
Transportation**

A. - E.1. ...

**F. Public Transit Services**

1. Effective for dates of service on or after December 20, 2011, the Medicaid Program shall provide reimbursement for non-emergency medical transportation services rendered by public transit providers.

2. Qualifying providers shall be reimbursed their cost through a certified public expenditure (CPE) program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

a. Only public transit providers with local funding available to use for the CPE program shall qualify to receive payments.

3. Public transit providers shall be required to submit a DHH-approved cost report to the department outlining their costs in order to determine payment amounts.

4. Exclusions. Payments shall not be made to public transit providers for NEMT services rendered to Medicaid recipients enrolled in a BAYOU HEALTH prepaid health plan.

5. It is the responsibility of the public transit provider to verify a Medicaid recipient's eligibility status and to determine whether the recipient is enrolled in a BAYOU HEALTH prepaid health plan.

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 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3030 (October 2011), amended LR 38:

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 or autonomy as described in R.S. 49:972.

## Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

## Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2012 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.

Bruce D. Greenstein  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Medical Transportation Program Non-Emergency Medical Transportation Public Transit Services

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

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic costs of \$177,372 for FY 12-13, \$188,367 for FY 13-14 and \$194,019 for FY 14-15; however, the state match shall be met through a certified public expenditure financing arrangement whereby qualifying providers shall transfer to the department funds to secure federal match to fund the payments for non-emergency medical transportation. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 12-13 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 federal revenue collections by approximately \$353,200 for FY 12-13, \$357,784 for FY 13-14 and \$368,517 for FY 14-15. It is anticipated that \$164 will be expended in FY 12-13 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed Rule, which continues the provisions of the December 20, 2011 Emergency Rule, amended the provisions governing the reimbursement methodology for the Medical Transportation Program in order to provide Medicaid reimbursement for NEMT services rendered by public transit providers (approximately 15,600 trips annually). It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid Program by approximately \$530,244 for FY 12-13, \$546,151 for FY 13-14 and \$562,536 for FY 14-15.

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

It is anticipated that the implementation of this proposed rule will not have an effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1209#063

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Substance Abuse/Addictive Disorders Facilities  
Minimum Licensing Standards  
Physical Space Requirements Exemption  
(LAC 48:I.7403)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.7403 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:1058.1-9. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 655 of the 2003 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services amended the licensing standards for substance abuse/addiction treatment facilities to reflect the national accreditation standards for such facilities (*Louisiana Register*; Volume 31, Number 3).

Act 384 of the 2009 Regular Session of the Louisiana Legislature merged the Office for Addictive Disorders (OAD) with the Office for Mental Health (OMH) to form the Office of Behavioral Health (OBH). Existing licensing provisions for the facilities which came under the authority of OAD and OMH did not allow for the facilities to operate in a common space after OBH was formed. Hence, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the provisions of the March 20, 2005 Rule governing the minimum licensing standards for substance abuse/addictive disorders facilities in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated mental health center or mental health clinic (*Louisiana Register*, Volume 37, Number 12). This proposed Rule is being promulgated to continue the provisions of the December 1, 2011 Emergency Rule.

#### Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

### Chapter 74. Substance Abuse/Addictive Disorders Treatment Facilities

#### Subchapter A. General Provisions

#### §7403. Licensing

A. - C.4.f. ...

5. A state- or district-owned or operated substance abuse/addictive disorders facility operating in or with a state- or district-owned or operated mental health clinic shall be exempt from the physical space requirements for operating as separate entities.

a. This exemption shall apply to facilities created under the provisions of R.S. 28:911-920 or R.S. 28:831(c).

D. - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1453 (July 2000), LR 31:669 (March 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:

### 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 or autonomy as described in R.S. 49:972.

### Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

### Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2012 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.

Bruce D. Greenstein  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Substance Abuse/Addictive Disorders Facilities—Minimum Licensing Standards Physical Space Requirements Exemption

#### 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 12-13. It is anticipated that \$328 SGF will be expended in FY 12-13 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.

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

This proposed Rule is being promulgated to continue the provisions of the December 1, 2011 Emergency Rule which amended the provisions governing the minimum licensing standards for substance abuse/addictive disorders facilities in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated mental health center or mental health clinic. It is anticipated that implementation of this proposed rule will not have estimable cost or economic benefits to substance

abuse/addictive disorders facilities in FY 12-13, FY 13-14, and FY 14-15.

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

This rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1209#065

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

#### Standards for Community Mental Health—Physical Space Requirements Exemption (LAC 48:III.537)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health propose to amend LAC 48:III.537 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:567-573. 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 and Human Resources, Office of Mental Health repromulgated all of the provisions governing the minimum licensing standards and policies for community mental health services rendered by mental health centers and clinics for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4).

Act 384 of the 2009 Regular Session of the Louisiana Legislature merged the Office for Addictive Disorders (OAD) with the Office for Mental Health (OMH) to form the Office of Behavioral Health (OBH). Existing licensing provisions for the facilities which came under the authority of OAD and OMH did not allow for the facilities to operate in a common space after OBH was formed. The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the provisions of the April 20, 1987 Rule governing the minimum licensing standards for community mental health centers and mental health clinics in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated substance abuse/addictive disorders facility (*Louisiana Register*, Volume 37, Number 11). This proposed Rule is being promulgated to continue the provisions of the December 1, 2011 Emergency Rule.

### Title 48

## PUBLIC HEALTH—GENERAL

### Part III. Mental Health Services

#### Chapter 5. Standards for Community Mental Health

##### Subchapter A. Centers and Clinics

#### §537. Facilities Management

A. - C. ...

D. Exemption. A state- or district-owned or operated mental health clinic operating in or with a state- or district-owned or operated substance abuse/addictive disorders

facility shall be exempt from the physical space requirements for operating as separate entities.

1. This exemption shall apply to facilities created under the provisions of R.S. 28:911-920 or R.S. 28:831(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:567-573.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Mental Health, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:

### 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 or autonomy as described in R.S. 49:972.

### Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is responsible for responding to inquiries regarding this proposed Rule.

### Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2012 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.

Bruce D. Greenstein  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Standards for Community Mental Health—Physical Space Requirements Exemption

#### 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 12-13. It is anticipated that \$246 (SGF) will be expended in FY 11-12 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.

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

This rule, which continues the provisions of the December 1, 2011 emergency rule, proposes to amend the provisions governing the licensing standards for community mental health centers and mental health clinics in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated substance abuse/addictive disorders facility. It is anticipated that implementation of this

proposed rule will not have economic cost or benefits to state- or district-owned or operated mental health clinics and substance abuse facilities.

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

This rule has no known effect on competition and employment.

J. Ruth Kennedy  
Medicaid Director  
1209#064

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Public Safety and Corrections Office of Motor Vehicles

#### Driver Education

(LAC 55:III.143, 149, 154, 155, 157, and 159)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Motor Vehicles, hereby proposes to amend Sections 143, 149, 154, 155, 157 and adopt Section 159 under Chapter 1 to implement Act 275 of the 2012 Regular Session which increased the age that first time driver's license applicants have to take the 30-hour classroom course and an 8-hour behind-the-wheel course to be licensed from 17 to 18 years of age. Furthermore, Act 275 limited the 8-hour behind-the-wheel instruction to four hours per day per student and added a requirement that those over the age of 18 must have eight hours of behind-the-wheel training in addition to the existing 6-hour classroom instruction. Furthermore, the Office of Motor Vehicles is proposing to add a military exemption to allow for active duty military status persons to submit proof of successful completion of military driver training in lieu of the completion certificate currently required for third party testers. The Office of Motor Vehicles additionally proposes to amend these rules to provide for an affidavit from secondary/alternative schools to submit in substitution for taking an additional criminal background check when they have already taken one as a result of their employment at the school when applying for a driving school instructor license for a secondary/alternative school. In addition, the Office of Motor Vehicles hereby proposes to amend these articles to provide further clarification to the third party tester requirement as mandated by Act 307 of the 2011 Regular Session.

### Title 55

### PUBLIC SAFETY

### Part III. Motor Vehicles

### Chapter 1. Driver's License

### Subchapter A. General Requirements

### §143. Commercial Driving Schools—36 Hours

A. As used in this Chapter, the following terms have the meanings described below.

*30 Hour Classroom Course*—a program which shall consist of a course of not less than 30 hours of classroom instruction required of first-time driver's license applicants' age 15 through 17 excluding lunch breaks. The classroom course may include a web based course equivalent to 30 hours of classroom instruction, which has been pre-approved



by DPS. This course shall be conducted utilizing the curriculum contained in this Subchapter.

\* \* \*

*Six Hour Pre-licensing Course*—a program which shall consist of six hours of classroom instruction required of first-time driver's license applicants eighteen years of age and above, if a 30-hour classroom course and 8-hour behind-the-wheel course is not completed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, 22:286 (April 1996), amended LR 38:1974 (August 2012), LR 38:

**§149. Application Process and Fees for Secondary/Alternative Schools and Instructors**

A. - C.2. ...

3. Each applicant must successfully pass a fingerprint background check. The background check will be conducted in a manner set forth by DPS. The applicant may obtain an affidavit from the school where currently employed which provides that the applicant underwent a criminal background check pursuant to R.S. 17:15 and R.S. 15:587 and that according to the background check, the applicant has not been convicted of, or pled guilty or nolo contendere to, any of the criminal offenses set forth in R.S. 15:587.1(C);

C.4. - F.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) AND R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 22:286 (April 1996), amended LR 38:1979 (August 2012), LR 38:

**§154. Driver Education Curriculum**

A. - C.10. ...

D. Eight-Hour Behind-the-Wheel Curriculum. The behind-the-wheel portion of the curriculum will be limited to no more than four hours behind the wheel for each student daily. There shall be no more than two students in the vehicle with the instructor. Upon completion of the behind-the-wheel portion a skills assessment shall be performed by the instructor. A road skills test shall be administered and the student shall attain a score of 70 percent or more to receive a certificate of successful completion.

1. - 5. ...

E. Six-Hour Pre-Licensing Course

1. - 3. ...

4. Eight-Hour Behind-the-Wheel Curriculum. The eight hour behind-the-wheel curriculum shall be done in the same manner and under the same conditions as provided in §154.D.

5. The driver education completion certificate shall be completed when a student has attained a score of 80 percent or better on the written knowledge test and a score of 70 percent or better on the eight-hour behind-the-wheel portion of the course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1985 (August 2012), amended LR 38:

**§155. Third Party Tester/Examiner Requirements**

A. Act 307 of the 2011 Legislative Session amended R.S. 32:408 to require all driver education providers to become certified as third party testers by June 30, 2012.

Driver Education providers must become certified as third party testers but may opt not to perform as third party testers.

B. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1) and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1989 (August 2012), amended LR 38:

**§157. General Regulations for Third Party Testers**

A. - G.2. ...

H. Although driving schools are required to be a third party tester, driving schools are not required to administer the road skills test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 32:408.1, and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1990 (August 2012), amended LR 38:

**§159. Military Exemption**

A. Any active duty military person who has not been previously licensed in this state or another state, upon proving his active duty status, may submit proof of successful completion of military driver training, which is essentially equivalent to the training required in this part, in lieu of providing the completion certificate required in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 32:408.1, and R.S. 40:1461.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:

**Family Impact Statement**

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

**Small Business Statement**

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have any adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of

applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

### Public Comments

Interested persons may submit written comments or requests for public hearing on these proposed Rule changes to Laura Hopes, Department of Public Safety and Corrections, Public Safety Services, Office of Legal Affairs, at 7979 Independence Blvd., Suite 307, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6103 (phone); (225) 925-3974 (facsimile). Comments will be accepted through close of business October 15, 2012.

### Public Hearing

A public hearing will be held on Thursday, October 18, 2012 at 10 a.m. at 7979 Independence Boulevard, Suite 301, Baton Rouge, Louisiana 70806. If the requisite number of comments are not received, the hearing will be cancelled. Please call and confirm the hearing will be conducted before attended.

Jill P. Boudreaux  
Undersecretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Driver Education

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

The proposed rules will have no impact on state or local governmental unit expenditures. The primary purpose of the proposed rules is to implement Act 475 of the 2012 Regular Session pertaining to driver education which changed the requirement for the driver education course to a person under the age of eighteen (18) instead of seventeen (17) and furthermore indicating that a person shall not be allowed to receive more than four (4) hours of actual driving instruction on any single calendar day. The Act further requires a minimum of eight (8) hours of actual driving instruction (in addition to the existing requirement of six (6) hours of classroom instruction). The proposed rule also clarifies that although driving schools are required to be a third party tester as provided in Act 307 of the 2011 Regular Session, driving schools are not required to administer the road skills test. Furthermore, the proposed rule implements an exception for secondary/alternative school instructor applicants by allowing the applicant to submit an affidavit from their currently employed school indicating they successfully passed a background check. The proposed rule also implements a military exemption for active duty military persons not previously licensed in this state or another state, to submit proof of successful completion of their military driver training in lieu of submitting a completion certificate required by the current rules. The implementation costs associated with Act 475 are reflected in the department's current operating budget.

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

There is no anticipated direct material effect on revenue collections of state or local governmental units as a result of the proposed rule.

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

There are additional costs associated with the proposed rule for students who are required to pay for their driver education courses and courses materials. These costs will vary depending on the school. Persons at least seventeen (17) but less than

eighteen (18) years of age must complete the thirty (30) hours of classroom instruction in addition to the eight (8) hours behind-the-wheel training. Prior to the legislation, persons age seventeen (17) years of age or older could take at a minimum the six (6) hour pre-licensing course only. Persons eighteen (18) years of age and older must take at a minimum the six (6) hour pre-licensing course in addition to the eight (8) hours behind-the-wheel training. The cost of the additional training is driven by demand and determined by each driver education provider.

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

The proposed rule may generate additional employment opportunities as driver education providers may require additional instructors for the behind-the-wheel portion of the course as required under Act 475. The proposed rule may also generate competition between driving schools as Act 475 changes the age requirement for first-time driver's license applicants, increasing to eighteen (18) from seventeen (17) the age at which an applicant must no longer submit proof of completing a driver education course consisting of 30 hours of classroom instruction and no less than 8 hours of driving instruction. Act 475 also requires that first time applicants eighteen (18) and over must complete a minimum 8 hours of driving instruction in addition to an existing requirement of 6 hours classroom instruction.

Jill P. Boudreaux  
Undersecretary  
1209#054

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Public Safety and Corrections Office of the State Fire Marshal

Manufactured Housing (LAC 55:V.Chapters 5 and 7)

Under the authority of R.S. 51:911.26(E) and R.S. 51:911.32(A)(2), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Fire Marshal gives notice that rulemaking procedures have been initiated to amend the manufactured housing commission regulations, LAC 55:V. The proposed rule makes technical changes to improve readability, eliminate duplicate items, and to codify current practice by the department regarding utilization of its statutory authority to regulate the manufactured housing industry. In addition, the proposed rule repeals the issuance of temporary installer's licenses and civil penalties that are no longer enforced. It also repeals the rules regarding remanufactured housing as the commission no longer performs this function.

### Title 55

### PUBLIC SAFETY

### Part V. Fire Protection

### Chapter 5. Manufactured Housing (Installation)

### Subchapter A. General Requirements

### §501. Definitions

A. In the regulations which follow, unless contract otherwise requires.

\* \* \*

*Alteration*—the replacement, addition, modification or removal of any equipment or installation after sale by a manufacturer to a retailer or distributor but prior to sale by a retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat producing, or electrical

system. It includes any modification made in the home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring connection to an electrical receptacle, where the replacement item is of the same configuration and ratings as the one being replaced. It also does not include an addition of an appliance requiring plug-in to an electrical receptacle, which appliance was not provided with the home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

\* \* \*

*Defect*—a failure to comply with an applicable federal manufactured housing safety and construction standard that renders the home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of *Imminent Safety Hazard*, *Noncompliance*, and *Serious Defect*.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:17 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1693 (December 1997), amended LR 38:

### **§503. Retailer Requirements**

A. A retail location of new manufactured homes shall have a sign, a listed land line telephone, a public office, a minimum inventory of eight homes, and a product line. The office shall be staffed with at least one employee during all times that the office is opened for business.

B. A retail location of used manufactured homes shall have a sign, a listed land line telephone and a public office. The office shall be staffed with at least one employee during all times that the office is opened for business.

C. Retailers of used manufactured homes are any person engaged in the sale, leasing, or distribution of mobile homes or manufactured homes primarily to a person who in good faith purchases or leases mobile homes or manufactured homes for purposes other than resale.

D. The sign required by this section shall contain the full name of the retailer as appears on the current license issued by the Commission. The sign shall be visible to the public as they travel on the street or highway on which the retailer is located. No part of the sign shall be concealed or obstructed from view.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 38:

### **§507. Handling of Consumer Complaints**

A. All complaints concerning units constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 shall be handled in compliance with Subpart I of the federal regulations established pursuant to the Act.

1. Upon receipt of a consumer complaint or other information indicating the possible existence of a failure to conform or imminent safety hazard, the state fire marshal

will review the complaint or information to determine where the home was manufactured and if a problem exists. All complaints shall be referred to the manufacturer or retailer if a problem is indicated. When there is information to indicate that homes with the same failure to conform, or imminent safety hazard may have been manufactured in more than one state, the complaint will simultaneously be forwarded to HUD and the home manufacturer.

2. - 6. ...

7. The manufacturer's plan for notification and correction, including contents of notice, time for implementation and completion of acts and reports, shall be made in accordance with the provisions of 24 CFR Section 3282.409 through 3282.413. When the manufactured home is in the hands of a distributor or retailers, it shall be handled in accordance with 24 CFR Section 3282.414.

8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:17 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1694 (December 1997), amended LR 38:

### **§509. Notification and Correction Procedure**

A. ...

B. Notification. The plan, including a copy of the notice as required by 24 CFR Section 3282.410, shall be submitted to the state fire marshal by the manufacturer and shall provide for notification by mail, to the first purchaser (not including any retailer or distributor of the affected manufacturer) of each manufactured home containing an imminent safety hazard, serious defect, defect or noncompliance and any subsequent purchaser to whom any warranty provided by the manufacturer or required by federal or state law has been transferred, to the extent feasible; by mail to any other person who is a registered owner of each manufactured home containing an imminent safety hazard, serious defect, defect or noncompliance and whose name has been returned to the manufacturer under the procedure of Record of Purchasers as provided for under 24 CFR Section 3282.410; by mail or other expeditious means to the retailers or distributors to whom such manufactured home was delivered. In the event the manufactured home has an imminent safety hazard or serious defect, the notification shall be forwarded by certified mail, if mailed.

C. - C.2. ...

3. The formal notification requirements which would result from any determination by the manufacturer under 24 CFR Section 3282.404 may be waived by the state fire marshal that would otherwise approve the plan upon receipt of satisfactory assurances from the manufacturer that:

a. the manufacturer has identified all possibly affected manufactured homes which have been sold to purchasers, retailers and distributors;

C.3.b. - C.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:18 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:1695 (December 1997), amended LR 38:

**Subchapter B. Manufactured Housing (Installation)**

**§521. Definitions**

A. When used in these regulations, these terms shall have the following meanings.

*Dealer*—Repealed and Replace with *Retailer*.

\* \* \*

*Retailer*—any person engaged in the sale, leasing, or distribution of mobile homes or manufactured housing primarily to a person who, in good faith, purchases or leases a mobile home or manufactured housing for purposes other than resale.

*Salesman*—any person employed by a retailer for purposes of selling manufactured housing to the public.

*Transporter*—an individual who transports the manufactured home or mobile home to the site of installation but does not perform the blocking and/or anchoring of the home. However, individuals who transport manufactured homes from the factory to the retailer’s location are exempt from this definition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:695 (April 1998), amended LR 26:2009 (September 2000), LR 38:

**§523. General**

A. - B. ...

C. An installer license shall be granted only to a person who bears a good reputation for honesty, trustworthiness, integrity, and competence to transact business in such a manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. If an applicant for a license is a partnership or a corporation, the qualifications of each member of the partnership or officer of the corporation may be considered by the commission in issuing or refusing to issue a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998); amended LR 38:

**§525. License Exceptions**

A. Notwithstanding the provisions of LAC 55:V.523, the following individuals are not required to have a license as provided therein:

1. when the individual installing the manufactured home is the owner thereof, or the manufactured home is owned by a member of the individual’s immediate family, and the manufactured home is not intended for sale, exchange, lease, or rent;

2. an individual installing additional blocking for support;

3. an individual installing a manufactured home when the manufactured home is installed on a retailer’s distributor’s, or manufacturer’s sales or storage lot or at a show and is not occupied or intended to be occupied. This exemption does not include those manufactured homes installed in manufactured homes parks or manufactured homes subdivisions;

4. an individual performing plumbing or electrical work when the individual doing the work is a licensed plumber or electrician;

5. an individual performing maintenance, repairs, or corrections to an installation for the purpose of customer service on behalf of manufacturers or retailers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998), amended LR 38:

**§527. Manufactured Housing Installer's License**

A. Effective May 1, 1998, a manufactured home may not be installed without a licensed manufactured housing installer supervising installation work being performed. The licensed manufactured housing installer is responsible for the reading, understanding, and following of the manufacturer’s installation instructions and performance of nonlicensed workers engaged in the installation of the home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998), LR 38:

**§535. Monthly Report**

A. An installer shall submit a monthly installation report to the Fire Marshal by the tenth day of the following month on forms provided by the fire marshal and provide all information requested thereon.

B. A report shall be filed every month, despite the fact that no homes were installed.

C. Reports shall be submitted on forms provided by the Office of the State Fire Marshal and provide all information requested thereon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), amended LR 26:2009 (September 2000), amended LR 38:

**§539. License Renewal**

A. Licenses issued under LAC 55:V.Chapter 5 shall expire on December 31 of the year following issuance.

B. - D. ...

E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), amended LR 38:

**§541. Issuance of the Temporary Installer's License**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), repealed LR 38:

**§543. License Suspension or Revocation; Imposition of Civil Penalties**

A. The fire marshal may, after notice and hearing as required by R.S. 49:950 et seq., suspend or revoke an installer’s license issued by this office, or impose a civil penalty as provided for by R.S. 40:1563.4, for violations of applicable statutes, rules, regulations, adopted codes, or standards or lawful orders issued by the fire marshal.

- B. The schedule of fines shall be as follows:
1. First offense of the following violations:
    - a. failure to timely renew license—\$125;
    - b. failure to timely file required report—\$100;
  - 1.c. - 3. Repealed.
  4. First offense of the following violations:
    - a. failure to properly set up and install the manufactured home—\$500.
    - b. - g. Repealed.
- C. The schedule of fines shall be as follows.
1. Performance of any installation services under "Uniform Standards Code for mobile homes and manufactured housing" by a non-licensed person excluding a homeowner—\$1,000.
  2. Repealed.
  3. Failure to install the permit sticker on the mobile home or manufactured home—\$100.
  4. Repealed.
  5. Unauthorized or improper transfer of permit sticker—\$1,000.
  6. Soliciting or contracting for service from unlicensed installer by a retailer, homeowner, or other party—\$1,000.
  7. - 9. Repealed.
  10. Holding oneself or one's business out for hire to perform any installation service or otherwise offering to perform any such task by an unlicensed installer—\$1,000.
  11. Failure to properly complete timely monthly installation report with information required—\$100.
  12. The re-inspection report indicates that the required corrections were not made to home after the installer notified the Office of the State Fire Marshal that the corrective work was done—\$750.
  13. Installing home into an improper wind zone—\$1,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998), amended LR 26:2009 (September 2000), amended LR 38:

**§547. Course curriculum Requirements for Education Provider Training**

- A. ...
- B. The course curriculum for manufactured house installers shall, at a minimum, include the following area of training:

B.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998), amended LR 38:

**§549. Requirements for Education Provider Instructors**

- A. Instructors shall be employees of the Office of State Fire Marshal who have been authorized to teach installation classes by the State Fire Marshal.

- B. Refresher classes may be offered by the LA Manufactured Housing Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998), amended LR 38:

**§551. Inspections by the Office of the State Fire Marshal**

- A. Upon request for inspection by a Louisiana-licensed retailer, manufacturer, installer, or the homeowner, the Office of the State Fire Marshal shall inspect the home to determine compliance with the applicable sections of R.S. 51:912.21 through R.S. 912.28 regarding installation.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998), amended LR 38:

**Chapter 7. Remanufactured Housing**  
**§701. General Provisions and Scope**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:

**§703. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:

**§705. Inspection Information Plate**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:

**§707. Label**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:

**§709. Exit Facilities; Exterior Doors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:

**§711. Fire Safety**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:32 (January 1990), repealed LR 38:

**§713. Windows, Egress**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:

**§715. Water Distribution and Drainage**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:

**§717. Gas Piping**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:

**§719. Electrical Systems**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:

**§721. Quality Assurance**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:

**§723. Inspections**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:912.5.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 16:33 (January 1990), repealed LR 38:

**Family Impact Statement**

The proposed Rule will not have any known or foreseeable impact on any family as defined by R.S. 49:972 D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents 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 the children.
6. Local governmental entities have the ability to perform the enforcement of the action proposed in accordance with R.S. 40:1730.23.

**Small Business Statement**

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than October 15, 2012, at 4:30 p.m. to Melinda Long, Attorney at Law, 7979 Independence Blvd. Ste. 307, Baton Rouge, La. 70806.

**Public Hearing**

A public hearing is scheduled for October 25, 2012 at 10 a.m. at 8181 Independence Blvd., Baton Rouge, LA 70806. Please call in advance to confirm the time and place of meeting, as the meeting will be cancelled if the requisite number of comments is not received.

Jill P. Boudreaux  
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Manufactured Housing**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)  
There are no anticipated implementation costs or material savings to state or local governmental units resulting from the proposed rule. The proposed rule makes technical changes to improve readability, eliminates duplicate items, and codifies current practices by the department regarding utilization of its statutory authority to regulate the manufactured housing industry. In addition, the proposed rule repeals the issuance of temporary installer's licenses and civil penalties that are no longer enforced. It also repeals the rules regarding remanufactured housing as the commission no longer performs this function.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated effect on revenue collections for state or local governmental units as a result of this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There is no anticipated effect on costs and/or economic benefits to directly affected persons or non-governmental groups as a result of this rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no anticipated effect on competition and/or employment as a result of this rule change.

Jill P. Boudreaux  
Undersecretary  
1209#052

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Revenue Policy Services Division

#### Income Tax Credits for Wind or Solar Energy Systems (LAC 61:I.1907)

Editor's Note: This Notice of Intent is being repromulgated in order to correct an error upon submission. The original Notice of Intent can be viewed in the August 20, 2012 edition of the *Louisiana Register* on pages 2282-2286.

Under the authority of R.S. 47:287.785, R.S. 47:295, R.S. 47:1511, and R.S. 47:6030, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.1907 relative to income tax credits for wind or solar energy systems.

This amendment to the Rule clarifies the application of the credits for those taxpayers who purchase and install wind or solar energy systems.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered By the Secretary of Revenue

#### Chapter 19. Miscellaneous Tax Exemptions

#### §1907. Income Tax Credits for Wind or Solar Energy Systems

A. Revised Statute 47:6030 provides an income tax credit for the purchase and installation of a wind or solar energy system by a Louisiana taxpayer, the owner of a residential rental apartment project, or by a taxpayer who purchases and installs such a system in a residence or a residential rental apartment project which is located in the state. In order for costs associated with the purchase and installation of a wind or solar energy system to qualify for this credit, the expenditure must be made on or after January 1, 2008. The amount of the credit is equal to 50 percent of the first \$25,000 of the cost of a wind or solar energy system.

#### B. Definitions

*Charge Controller*—an apparatus designed to control the state of charge of a bank of batteries.

*Grid-Connected, Net Metering System*—a wind or solar electric system interconnected with the utility grid in which the customer only pays the utility for the net energy used from the utility minus the energy fed into the grid by the customer. All interconnections must be in accordance with the capacity, safety and performance interconnection standards adopted as part of the Louisiana Public Service Commission's, the New Orleans City Council's, or other Louisiana utility regulatory entities, as appropriate, established Net Metering rules and procedures.

*Inverter*—an apparatus designed to convert direct current (DC) electrical current to alternating current (AC) electrical energy. Modern inverters also perform a variety of safety and power conditioning functions that allow them to safely interconnect with the electrical grid.

*Photovoltaic Panel*—a panel consisting of a collection of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

*Residence*—a single family dwelling, one dwelling unit of a multi-family, owner occupied complex, or one residential dwelling unit of a rental apartment complex. To be considered a residence, the physical properties of the space must provide the basic elements of a home, including appropriate and customary appliances and facilities and the occupant must use the facilities as a home with the intent to remain for a period exceeding 30 days. All eligible residences must be located in Louisiana.

*Residential Rental Apartment Complex*—a multi-family dwelling composed of multiple units in which the physical properties of each separate unit provides the basic elements of a home, including appropriate and customary appliances and facilities. To be considered a residential rental apartment complex, the taxpayer occupant or occupant(s) of the unit(s) must use the facilities as a home with the intent to remain for a period exceeding 30 days. All eligible residential rental apartment complexes must be located in Louisiana.

*Solar Electric System*—a system consisting of photovoltaic panels with the primary purpose of converting sunlight to electrical energy and all equipment and apparatus necessary to connect, store and process the electrical energy for connection to and use by an electrical load. Multiple system components working in tandem to connect, store and process the electrical energy needs for each residence or dwelling unit in a residential rental apartment complex shall constitute a single system for purposes of the tax credit.

*Solar Thermal System*—a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling. Multiple system components working in tandem to connect, store and process the electrical energy needs for each residence or dwelling unit in a residential rental apartment complex shall constitute a single system for purposes of the tax credit.

*Supplemental Heating Equipment*—a device or apparatus installed in a solar thermal system that utilizes energy sources other than wind or sunlight to add heat to the system, with the exception of factory installed auxiliary heat strips that are an integral component of a specifically engineered solar hot water storage tank.

*Wind Energy System*—a system of apparatus and equipment with the primary purpose of intercepting and converting wind energy into mechanical or electrical energy and transferring this form of energy by a separate apparatus to the point of use or storage. Multiple system components working in tandem to connect, store and process the electrical energy needs for each residence or dwelling unit in a residential rental apartment complex shall constitute a single system for purposes of the tax credit.

#### C. Eligibility for Wind and/or Solar Energy Systems Tax Credits

1. Regardless of the number of system components installed on each qualifying residence or residential apartment complex, such components shall constitute a single system for each residence or dwelling unit in a residential rental apartment complex for purposes of the tax credit.

2. All wind or solar energy systems must be installed in the immediate vicinity of the residence or apartment

project claiming the credit such that the electrical, mechanical or thermal energy is delivered directly to the residence or apartment project.

3. In order to claim a tax credit(s) for a wind energy system, solar electric energy system, or solar thermal energy system, the components for each system must be purchased and installed at the same time as a system.

4. For a taxpayer other than the owner of the residence or residential rental apartment project to claim a tax credit for a wind energy system, solar electric energy system, or solar thermal energy system, the taxpayer must provide the department with a copy of the contract in which the owner of the residence has clearly and unambiguously stated that he is not entitled to and will not claim the tax credit. Absent such a contract, the owner of the residence or residential rental apartment project is the only taxpayer eligible to claim the credit and the installer or developer shall have no right to the credit.

**D. Claiming the Wind and Solar Energy Systems Tax Credit**

1. The credit for the purchase and installation of a wind energy system or solar energy system by a taxpayer at his residence shall be claimed by the taxpayer on his Louisiana individual income tax return.

2. The credit for the purchase and installation of a wind energy system or solar energy system by the owner of a residential rental apartment project shall be claimed by the owner on his Louisiana individual, corporate or fiduciary income tax return.

3. The credit for the purchase and installation of a wind energy system or solar energy system by a taxpayer who purchases and installs such a system in a residence or a residential rental apartment project of which he is not the owner shall be claimed by the taxpayer on his Louisiana individual, corporate or fiduciary income tax return.

**E. Wind and Solar Energy Systems Eligible for the Tax Credit**

1. The credit provided by R.S. 47:6030 is only allowed for complete and functioning wind energy systems or solar energy systems. Local and state sales and use taxes are an eligible system cost. Any equipment added at a later date cannot use existing system components and has to have every element of a complete system in order to qualify for the credit.

**a. Exceptions to General Rule Allowing Credit Only for Complete Systems**

**i. Exception in the Case of a Multi-Family Residence**

(a). In order to be eligible to receive the credit, the owner of a single unit in a multi-family residence project must have an undivided interest in the wind or solar energy system that is being installed.

(b). If a component of a wind or solar energy system is shared, documentation must be supplied dividing up the costs of the component between all those eligible for the credit.

(c). Subsequent purchasers of units in the multi-family residence not in possession of an undivided interest at the time of installation, will not be eligible for the credit.

2. Wind Energy Systems. Eligible wind energy systems under the tax credit include systems designed to produce electrical energy and systems designed to produce mechanical energy through blades, sails, or turbines and may include the following.

System Type	Eligible System Components
DC Wind Electric Generation Systems	DC output wind turbine, controllers, towers & supports, charge controllers, inverters, batteries, battery boxes, DC & AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
AC Wind Electric Generation Systems	AC output wind turbine, controllers, towers & supports, charge controllers, power conditioners/grid interconnection devices, batteries, battery boxes, AC disconnects, junction boxes, monitors, display meters, lightning and ground fault protection, and wiring and related electrical devices and supplies from generator to residence or electrical load
Mechanical Wind Systems	mechanical output wind turbine, towers & supports, mechanical interconnection between turbine and mechanical load

3. Solar Electric Systems. Eligible solar electric systems under the tax credit include grid-connected net metering systems, grid-connected net metering systems with battery backup, stand alone alternating current (AC) systems and stand alone direct current (DC) systems, designed to produce electrical energy and may include the following.

System Type	Eligible System Components
Grid-Connected, Net Metering Solar Electric Systems	photovoltaic panels, mounting systems, inverters, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Grid-Connected, Net Metering Solar Electric Systems with Battery Backup	photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric AC Systems	photovoltaic panels, mounting systems, inverters, charge controllers, batteries, battery cases, AC & DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load
Stand Alone Solar Electric DC Systems	photovoltaic panels, mounting systems, charge controllers, batteries, battery cases, DC disconnects, lightning and ground fault protection, junction boxes, remote metering display devices and related electrical wiring materials from the photovoltaic panels to point of interconnection with the residence or electrical load

4. Solar Thermal Systems. Solar thermal systems eligible under the tax credit include systems designed to



produce domestic hot water, systems designed to produce thermal energy for use in heating and cooling systems and may include the following.

System Type	Eligible System Components
Domestic Solar Hot Water Systems	solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks
Heating and Cooling Thermal Energy Systems	solar thermal collectors, mounting systems, solar hot water storage tanks, pumps, heat exchangers, drain back tanks, expansion tanks, controllers, sensors, valves, freeze protection devices, air elimination devices, photovoltaic panels for PV systems, piping and other related materials from the solar thermal collectors to the solar hot water storage tanks

5. Solar energy systems not installed on the rooftop of the residence or multifamily apartment project but installed on the qualifying property shall constitute a free standing ground mounted system. Ground mounted solar energy systems include but are not limited to single pole mounted structures, multiple pole mounted structures utilizing a foundation if necessary. Additional walls, interior finishes, foundations, roofing structures not directly related to the solar energy system, or any other addition not directly related to the solar energy structure are not eligible system costs. Ground mounted systems must be more than 8' feet in height at its lowest point if titled unless specific building codes and/or flood plain restrictions apply. Each qualifying free standing ground mounted system must be separately itemized from any and all other energy systems included in a taxpayer's submitted Form R-1086.

6. All wind and solar energy systems for which a tax credit is claimed shall include an operations and maintenance manual containing a working diagram of the system, explanations of the operations and functions of the component parts of the system and general maintenance procedures.

7. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be UL listed and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

8. All photovoltaic systems installed at a tilt angle greater than 5 degrees shall have an azimuth greater than 80 degrees E and no more than 280 degrees W. North facing solar panels generally do not conform to industry best practices unless criteria above is satisfied.

9. All solar thermal apparatus claiming the tax credit must be certified by the Solar Rating and Certification Corporation (SRCC) and installed in compliance with manufacturer specifications and all applicable building and plumbing codes.

10. Applicants applying for the tax credit on any system(s) must provide proof of purchase to the Louisiana Department of Revenue detailing the following as applicable to your particular solar or wind energy system installation:

- a. type of system applying for the tax credit;
- b. output capacity of the system:

- i. solar electric systems—total nameplate listed kW of all installed panels;
- ii. solar thermal systems—listed SRCC annual BTU or equivalent kWh output;
- iii. wind electric systems—total rated kW of all alternators and generators;
- iv. wind mechanical systems—shaft horsepower as rated by manufacturer, licensed contractor or licensed professional engineer;
- c. physical address where the system is installed in the state;
- d. total cost of the system as applied towards the tax credit separated in an itemized list by:
  - i. equipment costs;
  - ii. installation costs;
  - iii. taxes;
  - e. make, model, and serial number of generators, alternators, turbines, photovoltaic panels, inverters, and solar thermal collectors applied for in the tax credit;
  - f. name and Louisiana contractor's license number of installer;
  - g. if applicable, copy of the modeled array output report using the PV Watts Solar System Performance Calculator developed by the National Renewable Energy Laboratory and available at the website [www.nrel.gov/rredc/pvwatts](http://www.nrel.gov/rredc/pvwatts). The analysis must be performed using the default PV Watts de-rate factor;
  - h. copy of a solar site shading analysis conducted on the installation site using a recognized industry site assessment tool such as a Solar Pathfinder or Solmetric demonstrating the suitability of the site for installation of a solar energy system;
  - i. conveyance certificate, deed or other legal document which evidences the owner of the residence or residential rental apartment complex;
  - j. when a system is installed by a third party owner, a complete and signed fourth page of Form R-1086.

F. Eligible Costs

1. Eligible Costs. Eligible costs that can be included under the tax credit are reasonable and prudent costs for equipment and installation of the wind and solar energy systems defined in Subsection B and described in Subsection E above.

a. All installations must be performed by a contractor duly licensed by and in good standing with the Louisiana Contractors Licensing Board with a classification of solar energy equipment and a certificate of training in the design and installation of solar energy systems from an industry recognized training entity, or a Louisiana technical college, or the owner of the residence.

2. Ineligible Costs. Labor costs for individuals performing their own installations are not eligible for inclusion under the tax credit. For purposes of this Paragraph, "individuals" shall mean natural persons as defined in Civil Code Article 24. For all other taxpayers, labor costs, including, but not limited to tree trimming and tree removal are not eligible under the tax credit. Supplemental heating and cooling (HVAC) equipment costs used with solar collectors are not eligible for inclusion under the tax credit. Other items ineligible for wind and/or solar energy systems tax credits include, but are not limited to the following: stand alone solar powered attic fans or ventilation

systems, solar powered lights, solar powered air conditioning or heating units, solar day lighting apparatuses, solar powered pool pumps, solar pool heating systems, and all other stand-alone wind or solar device(s).

3. Whenever, in return for the purchase price or as an inducement to make a purchase, marketing rebates or incentives are offered, the eligible cost shall be reduced by the fair market value of the marketing rebate or incentive received. Such marketing rebates or incentives include, but are not limited to, cash rebates, prizes, gift certificates, trips, energy efficiency improvements not directed related to wind or solar energy installation, including, but not limited to spray foam insulation, radiant barrier, window sealing and/or caulking, heating and air conditioning improvements, blower door testing, thermostat upgrades which are not an integral part of the solar energy monitoring system, domestic hot system upgrades not related to solar hot water system insulation, or any other thing of value given by the installer or manufacturer to the customer as an inducement to purchase an eligible wind or solar energy system.

4. Only one wind or solar energy systems tax credit is available for each eligible system. Once a wind or solar energy systems tax credit is claimed by a taxpayer for a particular system, that same system is not eligible for any other tax credit pursuant to this Section. If the residential property or system is sold, the taxpayer who claimed the tax credit must disclose his use of the tax credit to the purchaser.

#### G. Other Tax Benefits Disallowed

1. A taxpayer shall not receive any other state tax credit, exemption, exclusion, deduction, or any other tax benefit for wind and solar property for which the taxpayer has received a wind energy system, solar electric energy system, or solar thermal energy system credit under R.S. 47:6030.

a. Repealed.

2. Exception. The credit may be used in addition to any federal tax credits earned for the same system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6030 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:2206 (October 2008), amended LR 36:2048 (September 2010), amended by the Department of Revenue, Policy Services Division, LR 37:3532 (December 2011), LR 38:

#### Family Impact Statement

The proposed amendment of LAC 61:I.1907, regarding income tax credits for wind or solar energy systems, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents 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 this function.

#### Public Comments

Any interested person may submit written data, views, arguments or comments regarding this proposed Rule to Brad Blanchard, Attorney, Policy Services Division, Office

of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., Wednesday, September 26, 2012.

#### Public Hearing

A public hearing will be held on Thursday, September 27, 2012, at 10:30 a.m. in the Calcasieu Room, on the second floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

Jane Smith  
Acting Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Income Tax Credits for Wind or Solar Energy Systems**

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

The proposed amendment to this Rule clarifies and restricts eligibility requirements for the refundable wind and solar energy systems income tax credits. Currently, the maximum credit of \$12,500 (or half the cost of the solar or wind system and installation costs up to \$25,000) is allowed per system. The proposed amendment limits the credit to one (\$12,500) per residence or dwelling unit (apartment) where the current credit is limited to one per system. The credit will no longer be applicable to multiple systems working in tandem for one residence or dwelling. The proposed amendment also disallows certain costs in calculating the credit including certain capitalized expenditures, solar pool heating, certain housing surrounding non-rooftop systems, labor costs including but not limited to tree trimming or removal, cooling HVAC systems, certain attic fans or ventilation systems, solar powered lights, air-conditioning/heating units, day lighting apparatuses, pool pumps and all other stand-alone wind or solar devices. Under the proposed amendment, energy efficiency improvements or any other thing of value offered as a marketing rebate or incentive by the installer or manufacturer must be deducted from the eligible cost. The proposed amendment also stipulates the industry best practices that must be followed for the system to be eligible for the credit. Finally, depreciation is no longer included as an eligible cost but may be claimed as an income tax deduction on systems that receive the wind and solar credit.

The adoption of this amendment should not result in any implementation costs or savings to state or local governmental units.

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

The amounts paid in wind and solar tax credits have grown substantially since its inception in 2008. During the last five fiscal years, the Department of Revenue (LDR) issued payments of approximately \$1.5 million in FY 2008-2009, \$8.3 million in FY 2009-1010, \$13 million in FY 2010-2011, and \$22 million in FY 2011-2012. The limiting criteria included in the rule will effectively adjust revenue to the level apparently intended by the act. The impact is expected to be the result of limiting the credit to one system per dwelling and restricting the eligible costs. According to LDR, had the proposed amendment been in place during tax year 2011, about 40 percent of the credits paid would not have qualified. Assuming future growth in payments under the current rule of 50 percent per year given the expectation of additional qualifying rental systems, it is estimated that the impact on refundable credits due to the proposed amendment allowing fewer credits will be around \$13.2 million in FY 13, \$19.8 million in FY 14 and \$29.7 million in FY 15. There may be a slight offset to the

revenue increase since those systems that are depreciated would now be eligible for the income tax depreciation deduction under the proposed amendment.

Since this Rule is concerned with a state income tax credit, the amendment should have no impact on the revenue collections of local governmental units.

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

Some manufacturers, wholesalers, retailers and installers of wind and solar equipment may experience a lower level of sales, consistent with that apparently envisioned with the original act, due to a smaller amount of credit available as estimated in Section II. The proposed amendment states that those applying for the credit must supply an itemized list of the total cost of the system and must attach legal documentation of ownership. For a third party installation, a signed fourth page of Form R-1086 must be attached. Also some taxpayers who claim the wind or solar income tax credit may receive a smaller tax credit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

If fewer wind and solar systems are installed as a result of these measures, then the economic signals generated by the expanded portions of the credits would be changed, thereby potentially re-allocating resources to the other sectors of the economy.

Jane H. Smith  
Secretary  
1209#078

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Tax Administration Division**

Alternative Fuel Credit  
(LAC 61:I.1913)

Under the authority of R.S. 47:6035(G), as enacted by Act 469 of the 2009 Regular Legislative Session, R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Department of Revenue (LDR), after consultation with the Department of Natural Resources, proposes to adopt LAC 61:I.1913 to provide guidance with respect to the income tax credit authorized by R.S. 47:6035 for taxpayers who purchase qualified clean-burning motor vehicle fuel property. *Qualified clean-burning motor vehicle fuel property* is defined as equipment necessary for vehicles to operate on an alternative fuel, and specifically excludes property that is necessary for vehicles to operate on petroleum gasoline or petroleum diesel. *Alternative fuels* are defined to include natural gas, liquefied natural gas, liquefied petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity. The credit is equal to 50 percent of the cost of qualified clean-burning motor vehicle fuel property.

This proposed Rule discusses the documentation that is required to claim the credit and provides information necessary to determine that certain types of alternative fuel vehicles are not eligible under the provisions of the statute to be treated as "qualified clean-burning motor vehicle fuel property" because the vehicles have only a single fuel

storage and delivery system and retain the capability to be propelled by petroleum gasoline or petroleum diesel.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 19. Miscellaneous Tax Exemptions, Credits  
and Deductions Returns**

**§1913. Alternative Fuel Tax Credit**

A. The tax credit provided by R.S. 47:6035 authorizes an incentive to individuals or corporations to invest in qualified clean-burning motor vehicle fuel property. The tax credit is limited to a portion of the purchase price of qualified clean-burning motor vehicle fuel property. The statute specifically provides that "qualified clean-burning motor vehicle fuel property" does not include any equipment necessary for the operation of a motor vehicle on petroleum gasoline or petroleum diesel. For this reason, the credit provided by R.S. 47:6035 is not allowed for acquisitions of motor vehicles capable of being propelled by an alternative fuel, but that include only a single fuel storage and delivery system and that retain the capability to be propelled by petroleum gasoline or petroleum diesel.

B. The Alternative Fuel Tax Credit is available for:

1. a portion of the cost of the equipment and installation purchased to modify a vehicle originally propelled by petroleum gasoline or petroleum diesel to a vehicle capable of being propelled by an alternative fuel. If the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the modified vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

2. a portion of the cost of a new vehicle that is capable of being propelled by an alternative fuel. If the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

3. a portion of the cost of property, excluding the installation of the property, that is directly related to the delivery of an alternative fuel into the fuel tanks of motor vehicles propelled by an alternative fuel.

C. As used in this Section, the following words and phrases shall have the meanings ascribed to them in this Subsection, unless the context clearly indicates otherwise.

1. *Alternative Fuel*—fuel which results in emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates, or any combination of these which are comparably lower than emissions from petroleum gasoline or petroleum diesel and which meets or exceeds federal clean air standards, including but not limited to compressed natural gas, liquefied natural gas, liquefied petroleum gas, biofuel, biodiesel, methanol, ethanol, and electricity.

2. *Cost of Qualified Clean-burning Motor Vehicle Fuel Property* shall mean any of the following:

a. a portion of the retail cost paid by the owner of a motor vehicle for the purchase and installation by a technician of qualified clean-burning motor vehicle fuel property certified by the United States Environmental

Protection Agency to modify a motor vehicle which is propelled by petroleum gasoline or petroleum diesel so that the motor vehicle can thereafter be propelled by an alternative fuel, provided the motor vehicle is registered in this state, and further provided that if the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the modified vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel;

b. a portion of the retail cost to the owner of a new motor vehicle purchased at retail, that is originally equipped to be propelled by an alternative fuel, for the cost of that portion of the motor vehicle which is attributable to the storage of the alternative fuel, the delivery of the alternative fuel to the engine of the motor vehicle, and the exhaust of gases from combustion of the alternative fuel, provided the motor vehicle is registered in this state, and further provided that, if the vehicle has the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel that is capable of using only the alternative fuel:

i. for vehicles that are capable of being propelled, either partially or wholly, by electricity, such as hybrid-electric vehicles, plug-in hybrid-electric vehicles, all-electric vehicles, and low-speed electric vehicles, the credit is limited to the qualified clean-burning motor vehicle fuel property that stores and delivers the electricity to the motor, but is not authorized on another separate fuel storage and delivery system within the vehicle that uses petroleum gasoline or petroleum diesel as a fuel source;

c. a portion of the retail cost of property, excluding the installation cost of property, which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, provided the property is installed and located in this state and no credit has been previously claimed by any taxpayer on the cost of such property;

d. the cost of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel shall not include costs associated with exploration and development activities necessary for severing natural resources from the soil or ground.

3. *Qualified Clean-burning Motor Vehicle Fuel Property* shall not include:

a. equipment necessary for operation of a motor vehicle on petroleum gasoline or petroleum diesel;

b. motor vehicle fuel property that is capable of also being used with non-alternative fuels, such as petroleum gasoline or petroleum diesel;

c. repairs to or replacements of *qualified clean-burning motor vehicle fuel property* after the initial installation of such property into a vehicle by the vehicle's manufacturer or qualified technician.

D. The credit is equal to 50 percent of the cost of qualified clean-burning motor vehicle fuel property, and shall be claimed on the personal or corporate income tax

return for the period when the taxpayer incurred the cost for the qualified clean-burning motor vehicle fuel property.

E. In order to receive the credit provided by R.S. 47:6035, the taxpayer must provide certain information and documentation to the LDR that is specific to the type of property upon which the credit is claimed.

1. To claim the credit for the cost of the purchase and installation of vehicle equipment to modify a vehicle to be capable of being propelled by an alternative fuel, required information shall include, but not be limited to, the following:

a. the year, make, model, and vehicle identification number (VIN) of the vehicle;

b. a certification that the installed qualified clean-burning motor vehicle fuel property is certified by the United States Environmental Protection Agency, and that the technician performing the installation is certified by the manufacturer of the equipment to perform the installation;

c. an itemization of the costs associated with the modification, including copies of all invoices for the materials and installation services for the modification;

d. a certification that the modified vehicle is registered in this state; and

e. a certification that, if the modified vehicle retains the capability of being propelled by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel.

2.a For the purchase of a new vehicle that is capable of being propelled by an alternative fuel, required information shall include:

i. the year, make, model, vehicle identification number (VIN), and price paid for of the vehicle;

ii. a certification that the vehicle is registered in this state; and

iii. a certification that, if the vehicle is capable of being propelled also by petroleum gasoline or petroleum diesel, the vehicle must have a separate fuel storage and delivery system for the alternative fuel.

b. Once a motor vehicle is determined to contain qualified clean-burning motor vehicle fuel property, to claim the credit, the taxpayer can elect to determine the exact cost of the qualified clean-burning motor vehicle fuel property pre-installed by the manufacturer in the purchased vehicle. The cost of the qualified clean-burning motor vehicle fuel property for a new motor vehicle originally equipped to be propelled by an alternative fuel shall be the cost of that portion of the motor vehicle which is attributable to any of the following:

i. the storage of the alternative fuel;

ii. the delivery of the alternative fuel to the engine of the motor vehicle; and

iii. the exhaust of gases from combustion of the alternative fuel.

c.i. If the taxpayer is unable to or elects not to determine the exact cost of the qualified clean-burning motor vehicle property pre-installed by the manufacturer in the purchased vehicle, the taxpayer can claim a credit that is the lesser of:

(a). 10 percent of the cost of the motor vehicle;

or

(b). \$3,000.

ii. When determining the cost of a vehicle for this purpose, the cost shall exclude rebates and discounts provided by the manufacturer or seller of the vehicle, state and local sales taxes, and vehicle registration, title, and processing fees.

3. For the purchase of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, required documentation shall include:

a. a listing of each purchased item including compression equipment, storage tanks, and dispensing units for alternative fuel at the point where the fuel is delivered, together with copies of invoices for each item;

b. a certification that the property is installed and located in this state; and

c. a certification that no credit has been previously claimed by any taxpayer on the cost of such property.

F.1. The credit provided by this Section is applicable to purchase transactions, including purchases of new eligible vehicles, purchases of eligible equipment and installations for fuel system conversions, and purchases of property which is directly related to the delivery of an alternative fuel into the fuel tank of motor vehicles propelled by alternative fuel, but is not applicable to transactions for the lease or rental of vehicles or other tangible personal property, or to purchases of used vehicles.

2. The refundable income tax credit is available to persons and corporations on whom income taxes are imposed by law. The credit is not available to entities or other persons on whom income taxes are not imposed.

3. The credit is available only to persons and corporations who are the titled owners of eligible motor vehicles, as indicated in the records of the Office of Motor Vehicles of the Department of Public Safety and Corrections.

4. The secretary of the Department of Revenue is authorized to withhold the issuance of a credit to any taxpayer who is required to pay an alternative road use tax for his vehicle that operates on certain alternative fuels, such as liquefied natural gas (LNG), compressed natural gas (CNG), or liquefied petroleum gas (LPG), who has not paid the alternative road tax for that vehicle and received a decal from the secretary evidencing that payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, 1514, and 6035(G).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Administration Division, LR 38:

Jane Smith  
Secretary

### Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our Legislative Oversight Committees.

1. The Effect on the Stability of the Family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. Implementation of these proposed amendments will have no

effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. Implementation of these proposed amendments will have no effect on the functioning of the family.

4. The Effect on Family Earnings and Family Budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Implementation of these proposed amendments will have no effect on 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. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

### Small Business Statement

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed adoption of this Rule will have negligible impact on small businesses.

### Public Comments

Interested persons may submit data, views, or arguments, in writing to Jason DeCuir, Assistant Secretary, P.O. Box 66258, Baton Rouge, LA 70896, or by fax to (225) 219-2708. All comments must be submitted by 4:30 p.m., Tuesday, October 23, 2012.

### Public Hearing

A public hearing will be held on Thursday, October 25, 2012, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Jane Smith  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Alternative Fuel Credit**

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

The refundable alternative fuels credit may be taken against income tax for 50 percent of the cost and installation of the property related to alternative fuel use, whether in a vehicle or a delivery property, such as a service station. Without itemizing, the filer may instead choose a credit of 10 percent of the cost of a new vehicle that operates on alternative fuel. It is not required that the vehicle purchase occur in Louisiana. In general, the proposed Rule restricts eligibility of the credit and outlines documentation requirements. LDR has provided the credit to flex fuel vehicles under current law. The proposed Rule removes flex-fuel vehicles from credit eligibility.

The proposed Rule is not expected to result in any substantial increase or reduction in workload for the Department of Revenue (LDR). Implementation costs will be absorbed in the existing budget.

Local governmental units are not affected by this proposal.

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

The proposed Rule will result in fewer alternative fuel credits. The Rule disallows credits for flex-fuel vehicles by disqualifying those vehicles that have only one fuel storage and delivery system capable of being used for both "alternative fuel" and petroleum gasoline or petroleum diesel. Under the

proposed Rule, only vehicles capable of running independently of petroleum gasoline or petroleum diesel would qualify for the credit. Flex-fuel vehicles comprise the major portion of alternative fuel vehicle sales (96 percent of new registrations over the last 4 years, according to the Department of Public Safety) and eliminating them would significantly reduce the anticipated credit claims.

Since the Emergency Rule became effective on April 30, 2012 and was rescinded on June 14, 2012, a backlog of possible claims of \$4M has accumulated. However, since January 1, 2009, the Office of Motor Vehicles (OMV) reports 162,872 registrations, of which approximately 160,000 are potentially eligible vehicles in the state. If all eligible vehicles claimed an average of a \$2,700 credit, the state is liable for a maximum of \$432.0 M in credits through 8/16/12. Flex-fuel vehicles account for about \$414.7M of the \$432.0M. Thus far, about \$30M has been paid or claimed in alternative fuel credits leaving a state exposure of roughly \$400M through about mid-August.

However, since the proposed Rule does not become effective until December 20, 2012, all new alternative fuel vehicles purchased and registered with the OMV by that date, including flex-fuel vehicles, could still be eligible for the credit, which could increase the state's exposure. According to LDR, the actual claim pattern since 2009 has typically been 8-10 percent of available credits. This amount is currently captured in the revenue estimate of state general fund and is projected in a similar pattern within the current revenue forecast. An increase in filings in anticipation of a change in the eligibility Rules could significantly impact the revenue estimate since filings for the credit are anticipated to be greater than historical patterns. Publicity surrounding the credit could increase this impact given a more general familiarity with its availability making the opportunity to boost filings evident. The first year of prescription is 2013 so filers may still amend returns back to the commencement of the credit in 2009.

In the future under current law in the absence of the proposed Rule, it is estimated that the exposure could be \$250M per year assuming flex-fuel registrations and other alternative fuel vehicle filings grow at modest rates compared to the recent past. Credits issued would increase proportionately as flex-fuel and other alternative fuel vehicle sales increase. However, the actual impact may be dampened if 1) any new registrations are actually transfers from out of state that are not tied to a new vehicle sale, 2) the claims are never filed, or 3) the average claim amount is below \$2,700.

Under the proposed Rule, the state would continue to pay credits only on hybrid vehicles (3.5 percent of new vehicle registrations, according to OMV) and those running on or converted solely to an alternative fuel for those vehicles purchased or registered after December 20, 2012, and on fueling stations. Based on historical registrations, it is estimated that the credit will cost \$10 million annually if the Rule effectively eliminates flex-fuel vehicles. This represents a potential maximum savings of about \$240M per year, though it is not likely that the full amount of savings will be realized. Similarly, it is not likely that the full exposure to the state would be claimed each year in the absence of the proposed Rule because it is not known how aggressively the claims will be filed. However, given the size of the credit and the information surrounding it, the actual value of the savings could be very large, possibly over \$100 M per year, should recent consumer behavior and public knowledge of the credit be sustained.

This proposal should have no impact on the revenue collections of local governmental units.

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

Buyers and sellers of vehicles with the "dual-use" fuel systems are directly affected by this Rule. To the extent purchasers of these vehicles would have received the credit without this Rule, purchasers will be negatively affected by the amount estimated in Section II. According to the proposed Rule, filers claiming credits on fuels requiring an alternative road tax, such as liquefied natural gas, compressed natural gas or liquefied petroleum gas, may have payments withheld if the tax is not paid. To the extent sellers of these vehicles would sell more vehicles, or get a higher price for these vehicles because of the credit, sellers will be negatively affected.

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

This proposed Rule should not affect competition or employment.

Jane Smith  
Secretary  
1209#082

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Charter Boat Fishing Guides and Operations—Liability Insurance Requirements (LAC 76:VII.206)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations establishing liability insurance requirements for charter boat fishing guides and operations. Authority for promulgation of this Rule is included in R.S. 56:302.9(A) and R.S. 56:302.9.1(A).

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 2. General Provisions

#### §206. Charter Boat Fishing Guides and Operations—Liability Insurance Requirements

A. No person shall act as nor shall he represent himself to be a saltwater charter boat fishing guide unless that person has in his name proof of liability insurance that is currently in force and the following requirements shall be met.

1. The liability insurance required by this Section shall be written by an insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide*.

2. The liability insurance must be of a commercial nature and not associated with a primary residential property.

3. The liability insurance coverage shall not be less than \$300,000 per occurrence.

4. Proof of liability insurance must be in possession, while on the water, and available for inspection by a duly authorized agent of the department.

B. For a charter fishing operation which does not have a charter boat fishing guide present and consists of a large motorized vessel carrying smaller vessels attached to it with such vessels to be used by no more than two people for

fishing purposes, the main motorized vessel shall be required to carry, on board, proof of liability insurance that is currently in force and the following requirements shall be met.

1. The liability insurance required by this Section shall be written by an insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide*.

2. The liability insurance must be of a commercial nature and not associated with a primary residential property.

3. The liability insurance coverage shall not be less than \$300,000 per occurrence.

4. Proof of liability insurance must be available for inspection by a duly authorized agent of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:302.9(A) and R.S. 56:302.9.1(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 38:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### Family Impact Statement

In accordance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### Public Comments

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Department of Wildlife and Fisheries, Fisheries Division, P.O. Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to jadriance@wlf.la.gov by Wednesday, October 10, 2012.

Ann L. Taylor  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: Charter Boat Fishing Guides and Operations—Liability Insurance Requirements

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

The proposed rule change will have no impact on state or local governmental unit expenditures.

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

The proposed rule change is anticipated to have no impact on revenue collections of the state or local governmental units.

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

The proposed rule change establishes requirements for liability insurance that must be possessed by saltwater charter fishing operations and is intended to implement Act 844 of the

2012 Regular Legislative Session. Saltwater charter fishing operations include saltwater charter fishing guides and charter fishing operations that do not have a charter fishing guide present and consist of a large motorized vessel carrying smaller vessels attached to it with such vessels to be used by no more than two persons for fishing purposes. For these operations, the proposed rule change establishes that liability insurance must be written by an insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide*, be of a commercial nature and not associated with a primary residential property, and provide not less than \$300,000 in liability coverage per occurrence. Further, the proposed rule change establishes that these operations shall be required to maintain proof of liability insurance and make the proof of liability insurance available for inspection by an authorized agent of the Department of Wildlife and Fisheries.

In 2011, 760 individuals purchased a resident or non-resident charter boat fishing guide license and 10 individuals or entities purchased a mothership license. The proposed rule change will increase the operating costs for charter boat fishing guides and mothership license holders who do not already possess liability insurance that meets the requirements specified in the proposed rule change. It is unknown how many of these individuals and entities will be affected by the proposed rule change and what the increase in operating costs will be for those that are affected. An indeterminable number of saltwater charter fishing operations already possess liability insurance that meet the requirements specified in the proposed rule change and will therefore not be affected by the proposed rule change. Many of these individuals and entities are also regulated by the United States Coast Guard, which requires that many of the commercial operations that it regulates possess liability insurance that meet many of the requirements stipulated in the proposed rule change.

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

The proposed rule change is anticipated to have no effect on competition and employment in the public and private sectors.

Lois Azzarello  
Undersecretary  
1209#048

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Recreational Offshore Landing Permit (LAC 76:VII.377)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, modifying existing recreational offshore landing permit regulations. Authority for adoption of this Rule is included in R.S. 56:6(34). Said Rule is attached to and made part of this Notice of Intent.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishing §377. Recreational Offshore Landing Permit

A. Any person possessing any one of the following fish species or species groups on board a vessel taken from within or without Louisiana territorial waters shall be required to have obtained and have in their immediate possession a recreational offshore landing permit. The



recreational offshore landing permit shall be available for inspection by a duly authorized agent of the department:

1. highly migratory species:
  - a. tunas—bluefin, albacore, yellowfin, skipjack, bigeye, blackfin;
  - b. billfish—blue marlin, white marlin, sailfish and longbill spearfish;
  - c. swordfish;
2. reef fish species:
  - a. any species of snapper other than gray snapper;
  - b. any species of amberjack;
  - c. any species of grouper or hind.

B. Permits may be obtained at no cost, from the Department of Wildlife and Fisheries, or authorized method, by persons who hold any valid license authorizing the taking and possessing of saltwater species of fish. Permits shall be valid for the same duration as the license authorizing saltwater fishing privileges. For those licenses that do not have to be renewed every year, the permit shall be valid for one year from the date it was obtained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(34).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 38:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### Family Impact Statement

In accordance with Act No. 1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### Public Comments

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Department of Wildlife and Fisheries, Fisheries Division, Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to jadriance@wlf.la.gov by Wednesday, October 10, 2012.

Ann L. Taylor  
Chairman

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Recreational Offshore Landing Permit

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

The proposed rule change is anticipated to have no impact on state or local governmental unit expenditures.

Currently, the Louisiana Department of Wildlife and Fisheries does not have the ability to identify specific recreational saltwater anglers who target snapper, amberjack,

grouper, or hind in Louisiana. The proposed rule change will allow for the Louisiana Department of Wildlife and Fisheries to identify recreational saltwater anglers who target snapper, amberjack, grouper, or hind in Louisiana, which will allow the agency to better manage these highly valuable fish populations in Louisiana. The proposed rule change will cause additional individuals to obtain Recreational Offshore Landing Permits. This may result in a minor increase in workload for the Department of Wildlife and Fisheries.

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

The proposed rule change is anticipated to have no impact on revenue collections of the state or local governmental units.

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

The proposed rule change will require that any person possessing snapper other than gray snapper, any species of amberjack, or any species of grouper or hind on board a vessel taken from within or without Louisiana territorial waters to have obtained and have in their immediate possession a Recreational Offshore Landing Permit.

From 2007 to 2011, an average of 103,341 angler trips were taken each year to the federal Exclusive Economic Zone (EEZ) off the Louisiana coast. The 103,341 angler trips reflect the total number of angler trips taken and does not represent the number of unique individual anglers fishing off of Louisiana. The number of angler trips taken to the EEZ off of Louisiana each year is an approximation of the maximum number of additional anglers that will acquire Recreational Offshore Landing Permits each year due to requirements stipulated in the proposed rule change because this is where most snapper other than gray snapper, any species of amberjack, and any species of grouper or hind are caught. These anglers will incur no additional costs as a result of the proposed rule change because the Recreational Offshore Landing Permit will be made available by the Department of Wildlife and Fisheries at no charge. Because the Recreational Offshore Landing Permit will be obtainable via the Department of Wildlife and Fisheries website and mobile applications, the effort necessary for anglers to obtain the Recreational Offshore Landing Permit will be minimal.

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

The proposed rule change is anticipated to have no effect on competition and employment in the public and private sectors.

Lois Azzarello  
Undersecretary  
1209#050

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

#### NOTICE OF INTENT

#### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Reef Fish—Harvest Regulations (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.335, modifying existing reef fish harvest regulations. Authority for adoption of this Rule is included in R.S. 56:6(25)(a), 56:320.2, 56:326.1 and 56:326.3. Said Rule is attached to and made part of this Notice of Intent.



**Title 76  
WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery**

**§335. Reef Fish—Harvest Regulations**

A. ...

\* \* \*

B. Reef Fish Permits

1. - 4. ...

5. Recreational Offshore Landing Permit. Persons aboard a vessel whether within or outside Louisiana territorial waters possessing any of the following reef fish species: red snapper, greater amberjack, gag grouper, red grouper, black grouper, scamp, rock hind, red hind, yellowfin grouper, or yellowmouth grouper or any species of grouper, hind, amberjack, or snapper other than gray snapper are required to have a valid recreational offshore landing permit in their immediate possession and on board the vessel.

6. No person aboard any commercial vessel shall transfer or cause the transfer of reef fish between vessels on state or federal waters.

C. - G4. ...

5. The secretary of the Department of Wildlife and Fisheries is hereby authorized, upon notification to the chairman of the Wildlife and Fisheries Commission, to close, open, re-open or re-close any reef fish season as needed when informed of such by the National Marine Fisheries Service or when a landings allocation has been met in order to maintain consistency with modifications in adjacent federal waters or with state established allocations.

H. - J. ...

K. Recreational Reporting Requirements

1. The following species of reef fish have reporting requirements for recreational harvest:

- a. red snapper;
- b. greater amberjack;
- c. gag grouper;
- d. red grouper;
- e. black grouper;
- f. scamp;
- g. rock hind;
- h. red hind;
- i. yellowfin grouper;
- j. yellowmouth grouper.

2. When possessing any recreationally harvested reef fish species listed in Paragraph 1 of this Subsection, on a vessel within Louisiana territorial waters, a written harvest report must be maintained on such vessel indicating the date harvested, time put on board, permit number of the person catching the fish, location of catch and length of the fish. It is the responsibility of the person catching the fish or in the case of a chartered vessel the licensed captain to record and maintain such information on the vessel in order to legally possess the fish. Any person possessing such fish without such documentation shall be considered to be in violation of this Section. Harvest report forms will be made available by the department online to recreational offshore landing permit holders, but do not necessarily have to be used as long as the proper information is recorded and maintained and available for immediate inspection on the fishing vessel.

3. No person shall transfer any of the reef fish species listed in Paragraph 1 of this Subsection at sea, or offload any of those species, prior to being validated by contacting the toll free number provided or other means approved by the department to validate the reef fish species possessed as listed above. When such validation is made, an authorization code will be provided which shall be recorded on the harvest report associated with those fish. The information required on the harvest report must be provided when validating the catch in order to obtain an authorization code. In the case where a minor is in possession of the fish the guardian of such minor shall be responsible for the documentation and validation.

4. A charter vessel captain is allowed to use fully completed harvest reports instead of validation prior to offloading. A charter vessel captain is required to contact the department by the fifteenth of each month to report harvest and receive authorization codes for trips taken in the previous month.

5. Failure to abide by these rules and regulations shall constitute a violation of this Section and shall be fined in accordance with the provisions of a class one violation pursuant to R.S. 56:31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:320.2(C), R.S. 56:326.1, and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138 (June 1998), LR 24:1139 (June 1998), LR 24:1972 (October 1998), LR 26:793 (April 2000), LR 26:1505 (July 2000), LR 26:2833 (December 2000), LR 31:3166 (December 2005), LR 33:1156 (June 2007), repromulgated LR 33:1397 (July 2007), amended LR 34:2209 (October 2008), LR 34:2682 (December 2008), LR 36:1791 (August 2010), LR 38:1455 (June 2012), LR 38:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

**Family Impact Statement**

In accordance with Act No. 1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

**Public Comments**

Interested persons may submit comments relative to the proposed Rule to Jason Adriance, Department of Wildlife and Fisheries, Fisheries Division, P.O. Box 98000, Baton Rouge, LA 70898-9000, or via e-mail to jadriance@wlf.la.gov by Wednesday, October 10, 2012.

Ann L. Taylor  
Chairman

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

**RULE TITLE: Reef Fish—Harvest Regulations**

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

The proposed rule change will have no impact on state or local governmental unit expenditures.

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

There will be no effect on revenue to the state or local governmental units as a result of the proposed rule change.

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

The proposed rule change will impact recreational anglers. From 2007 to 2011, an average of 103,341 angler trips were taken each year to the federal Exclusive Economic Zone (EEZ) off of the Louisiana coast. The number of angler trips taken to the EEZ off of the Louisiana coast each year is an approximation of the maximum number of anglers who may be affected by the proposed rule change each year. These recreational anglers may be affected by the proposed rule change because they would now be required to maintain a harvest report on the fishing vessel and obtain a landing authorization code if they harvest certain reef fish. In FY 10-11, there were 494,468 licensed Louisiana saltwater recreational anglers (resident and non-resident), which suggests that a maximum of 21% of Louisiana saltwater recreational anglers may be affected by the proposed rule change. The proposed rule change is not anticipated to affect the number or characteristics of reef fish these Louisiana saltwater recreational anglers harvest. The proposed rule change will have no financial impact on Louisiana saltwater recreational anglers.

The proposed rule change will require that a written harvest report for certain reef fish be maintained on Louisiana-based vessels within or outside Louisiana territorial waters from which these fish are recreationally harvested. In the harvest report, data shall be maintained on the date and time of the harvest, permit number of the person making the catch, location of the catch, and length of the fish harvested. It will be the responsibility of the person landing the fish to ensure that the harvest report is maintained, except in the case of a landing made from a chartered vessel or a landing made by a minor. The Department of Wildlife and Fisheries shall make harvest report forms available to the public at no charge. Individuals will not be required to use the harvest report form made available by the Department of Wildlife and Fisheries and will be allowed to use forms that they create so long as said forms document all required information.

The proposed rule change shall also require that a person not offload certain reef fish from a vessel prior to the harvest being validated by the Department of Wildlife and Fisheries. When validating the landing with the Department of Wildlife and Fisheries, the individual will be provided with an authorization code for the landing, which will be required to be entered in the harvest report.

Further, the proposed rule change establishes that the Secretary of the Department of Wildlife and Fisheries shall have the authority to close, open, re-open, or re-close seasons for reef fish upon notification to the Chairperson of the Wildlife and Fisheries Commission based on landing allocations or state established fish allocations. The Secretary of the Department of Wildlife and Fisheries is currently authorized to close, open, re-open, or re-close seasons for reef fish upon notification to the Chairperson of the Wildlife and Fisheries Commission as needed when informed as such by the National Marine Fisheries Service.

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

The proposed rule change is anticipated to have no effect on competition and employment in the public and private sectors.

Lois Azzarello  
Undersecretary  
1209#051

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission**

**Removal of Abandoned Crab Traps (LAC 76:VII.367)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the commission by R.S. 56:332(N). Said Rule is attached and made a part of this Notice of Intent.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishery  
§367. Removal of Abandoned Crab Traps**

A. The use of crab traps shall be prohibited from 6 a.m., February 16, 2013 through 6 a.m., February 25, 2013 within that portion of Plaquemines Parish as described below.

1. From a point originating along the eastern shore of the Mississippi River at 29 degrees 44 minutes 00 seconds north latitude; thence eastward along 29 degrees 44 minutes 00 seconds north latitude to 89 degrees 40 minutes 00 seconds west longitude; thence southward along 89 degrees 40 minutes 00 seconds west longitude to the eastern shore of the Mississippi River; thence northward along the eastern shore of the Mississippi River terminating at the point of beginning.

B. The use of crab traps shall be prohibited from 6 a.m., March 9, 2013 through 6 a.m., March 18, 2013 within that portion of St. Bernard Parish as described below.

1. From a point originating from the intersection of the northwestern shore of Bayou Yscloskey and the southern shore of the Mississippi River Gulf Outlet; thence northward to the southwestern shore of Shell Beach Cut; thence northward along the western shore of Shell Beach Cut to the southern shore of Lake Borgne; thence northward a distance of one-half mile from the southern shore of Lake Borgne; thence eastward and northward along a line extending one-half mile offshore along the southern and western shore of Lake Borgne to 29 degrees 58 minutes 00 seconds north latitude; thence eastward along 29 degrees 58 minutes 00 seconds north latitude to 89 degrees 22 minutes 00 seconds west longitude; thence southward along 89 degrees 22 minutes 00 seconds west longitude to the southern shoreline of the Mississippi River Gulf Outlet; thence westward along the southern shoreline of the Mississippi River Gulf Outlet to the eastern shore of Bayou La Loutre; thence southward along the eastern shore of Bayou La Loutre; thence westward along the southern shore of Bayou La Loutre to the western shore of Bayou Yscloskey; thence northward

along the western shore of Bayou Yscloskey and terminating at the point of beginning.

C. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed areas during the closure periods shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January, 2010), LR 38:146 (January, 2012), LR 38:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### **Family Impact Statement**

In accordance with Act No. 1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### **Public Comments**

Interested persons may submit written comments relative to the proposed Rule to Martin Bourgeois, Marine Fisheries Biologist DCL-B, Department of Wildlife and Fisheries, Marine Fisheries Section, P.O. Box 189, Bourg, LA 70343, prior to November 1, 2012.

Ann L. Taylor  
Chairman

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

#### **RULE TITLE: Removal of Abandoned Crab Traps**

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

The proposed rule change will have no impact on state or local governmental unit expenditures.

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

The proposed rule change is anticipated to have no impact on revenue collections of the state or local governmental units.

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

The proposed rule would prohibit the use of crab traps within a portion of Plaquemines Parish from 6:00 a.m., February 16, 2013 through 6:00 a.m. February 25, 2013, and in a portion of St. Bernard Parish from 6:00 a.m. March 9, 2013 through 6:00 a.m. March 18, 2013. Crab fishermen who utilize the area proposed for closure will incur lost fishing time during the designated period and be subject to additional costs from having to temporarily remove their traps. These impacted crab fishermen will have to either move their traps to adjacent open fishing areas or remove their traps from the water for the duration of the closure.

Local seafood dealers, processors and consumers may experience a slight decrease in the availability of fresh crabs during the closure, resulting in a slightly higher price for fresh crabs in the short term. However, the crab resource will not be lost or harmed in any way and will be available for harvest when the closed areas are reopened.

Recreational saltwater anglers, commercial fishermen and individuals who operate vessels within the designated areas may realize slight positive benefits from the removal of abandoned crab traps, since encounters with abandoned traps often result in lost fishing time and damage to the vessel's lower unit and/or fishing gear. The removal of abandoned crab traps will reduce the mortality of and injuries to crabs and by-catch which become trapped and die in these traps. Thus, the removal of abandoned crab traps should provide improved fishing and reduced fishing costs.

The overall impact of the proposed area closures is anticipated to be slight, since the duration of the closures is only for nine days each during the lowest harvest time of the year, and adjacent waters will remain open for crab fishermen to continue to fish.

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

Since waters adjacent to the closure area will remain open for crab harvest and fishermen who fish during this time period are expected to relocate their traps, effects on competition and employment are expected to be negligible.

Lois Azzarello  
Undersecretary  
1209#047

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **Special Bait Dealer's Permit (LAC 76:VII.329)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.329, which provides for a special bait dealer's permit program. Authority to establish these regulations is vested in the commission by R.S. 56:497(C). Said Rule is attached and made a part of this Notice of Intent.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 3. Saltwater Sport and Commercial Fishery §329. Special Bait Dealer's Permit**

A. Policy. The special bait dealer's permit is intended solely for the benefit of the recreational fishing public which desires to use live shrimp and live croaker as bait during the closed shrimp seasons. Its purpose is to allow the

uninterrupted operation of those commercial establishments which sell live bait shrimp and live croaker to the fishing public during the closed shrimp seasons. The permit is not intended for the direct use of recreational fishermen, charter boats, commercial fishermen who sell dead shrimp or croaker, or for any other entity which may wish to catch shrimp or croaker for their own use during the closed shrimp seasons.

#### B. Application

1. Applicants wishing to sell live shrimp or live croaker harvested from Louisiana waters during closed shrimp season must apply for a special bait dealer permit from the department for a fee of \$110.00.

2. The special bait dealer's permit shall be valid for one year beginning January 1 and ending December 31 of that same calendar year. The permit may be purchased at any time during the year for the current permit year and beginning November 15 for the immediately following permit year.

3. Applications will be accepted only from the owner of an onshore business which sells or plans to sell live shrimp or live croaker to recreational fisherman.

4. Applicant shall be responsible for acquiring and possessing all proper licenses including the wholesale/retail seafood dealers license.

5. Any person convicted of any class three or greater wildlife or fisheries violation within the previous three years prior to the date of application shall not qualify to obtain a special bait dealer's permit or be onboard any vessel engaged in permitted activities.

6. Applicant must post a \$1,000 cash bond before the permit is issued. This bond will be forfeited if the permittee, his employee, or his contractor violates any provision of the rules and regulations concerning the special bait dealer's permit or if the permittee, his employee, or his contractor violates any commercial fishing law or regulation while operating under the permit.

7. All new applications shall require an inspection by the department of their onshore facility and vessel prior to permit being issued. Subsequent inspections may be required at renewal. Inspection requirements shall verify applicant is operating a commercial establishment which sells live shrimp or live croakers to the fishing public for use as bait and shall include:

a. onshore facility able to maintain live shrimp or live croakers;

b. onshore facilities and vessel tanks must have provisions for aeration and/or circulation of the water in which live shrimp or live croakers are held;

c. onshore facility holding tanks must have a minimal combined capacity of 300 gallons. Tanks having less than 30 gallon capacity will not be included in combined on shore facility capacity;

d. vessel tanks must be carried on or built into the vessel and have a minimum of one compartment or tank with a minimum capacity of 30 gallons;

e. notice to the public must be posted that live bait is available.

8. Only the vessel and those commercial fishermen specified at the time of application shall operate under the permit. Amendments to vessel or commercial fishermen listed under the permit must be submitted to the department

and approved before the new vessel or commercial fisherman can operate under the permit. The permit is not transferable to any other person or vessel. The entire original permit must be carried on the vessel while in operation.

#### C. Operations

1. The entire original permit must be in the possession of the commercial fisherman while operating under the conditions of the permit. Only the vessel and those commercial fisherman specified at the time of application shall operate under the permit. No other vessel or commercial fisherman shall be used under this permit.

2. Live wells, aeration tanks, and other vessel facilities to maintain live shrimp or croaker must be carried on or built into this vessel while operating under the conditions of the permit.

3. No person shall transfer any shrimp or croaker taken under a permit from one vessel to another unless both vessels are permitted under the same wholesale/retail seafood dealer, and the captain of the harvesting vessel has signed a trip ticket for the harvested bait, and the bait is then transported directly to the wholesale/retail seafood dealer under which both vessels are operating; upon receiving the harvested bait the dealer shall complete the trip ticket.

4. While operating under the conditions of the permit, no shrimp or croaker may be sold from the vessel to anyone other than the licensed wholesale/retail seafood dealer listed on the permit during the closed shrimp seasons.

5. Signs which identify the vessel as working under the special bait dealer's permit shall be posted on the vessel. These signs shall be visible from either side of the vessel and from the air; the word "BAIT" and the permit number shall be placed on these signs in letters at least 12 inches high.

6. No more than two gallons of dead shrimp or croaker or combination thereof may be aboard the vessel while it is operating under the permit. All dead shrimp or croaker or combination thereof in excess of two gallons must be immediately returned to the water. Shrimp or croaker dying in onshore holding facilities may be sold for bait use only.

7. Permitted gear is limited to one trawl not to exceed 25 feet along the cork line 33 feet along the lead line or two skimmer nets having an individual net frame size not more than 16 feet measured horizontally or 12 feet measured vertically or 20 feet measured diagonally. These are the only commercial fishing gears which can be used or carried aboard the permitted vessel while the vessel is operating under the permit; no other commercial fishing gear other than unserviceable crab traps as described in R.S. 56:322(G) may be on the vessel when it is being used under the permit.

8. Bait shrimp or croaker may be taken only from official sunrise to official sunset; however, the department at its discretion, may designate the areas and hours of night time operations under the permit provided permitted vessels are equipped with a working vessel monitoring system as described in LAC 76:VII.371.

9. Each time the permit is used the permittee must notify the department by contacting the Communications Section on the designated toll free telephone number provided on the permit and recording the confirmation number received. Before the vessel departs the dock under the permit, the department must be advised of the time of departure and the sub-basin code corresponding to the

department's trip ticket sub-basin map in which trawling or skimming will take place; immediately after the permitted vessel returns to the dock the department must be notified of the time of return by contacting the Communications Section on the designated toll free telephone number provided on the permit.

10. The permittee shall maintain an up-to-date record of the activities conducted under the permit on forms provided by the department for that purpose. These records shall be kept onboard the vessel and made available for inspection by agents of the department upon request by said agents at any time and shall include the permittee's name and permit number, date, departure time, fishing location, gear used, confirmation number, return time, and number of live shrimp or live croaker harvested. All applicable record information shall be completed before fishing operations begin. In addition, any agent of the department shall be allowed to make an onsite inspection of any facilities operating under the permit, at any time. Nothing herein this Section shall exempt the permittee from trip ticket reporting requirements as provided for in R.S. 56:306.4.

#### D. Penalties

1. No person shall violate any provision of this Section. Violations of any provision of this Section shall constitute a class 4 violation as defined in R.S. 56:34.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 56:326.3 and 56:497(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, and Wildlife and Fisheries Commission, LR 3:210 (April, 1977), amended LR 15:867 (October, 1989), LR 19:215 (February, 1993), LR 23:86 (January, 1997), LR 33:864 (May 2007), LR 36:77 (January 2010), LR 38:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

#### Family Impact Statement

In accordance with Act No. 1183 of the 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

#### Public Comments

Interested persons may submit written comments relative to the proposed Rule to Mr. Martin Bourgeois, Marine Fisheries Biologist DCL-B, Department of Wildlife and Fisheries, Marine Fisheries Section, P.O. Box 189, Bourg, LA 70343, prior to November 1, 2012.

Ann L. Taylor  
Chairman

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Special Bait Dealer's Permit

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

The proposed rule change will have no impact on state or local governmental unit expenditures. Enforcement of the proposed rule change will be carried out using existing staff.

The number of Special Bait Dealer's Permits issued since 2001 has increased from 27 to 52 in 2005 but declined to 25 in 2006 following the devastating impacts of Hurricanes Katrina and Rita and have numbered 44 in 2008 and 2009 and in 2012 now total 55. Increasing demand for live shrimp and live croaker from marine recreational anglers combined with certain operational restrictions currently placed on Special Bait Dealer's Permit holders have resulted in insufficient live bait supplies available to meet these increasing demands, particularly in early spring before the start of the spring inshore shrimp season and throughout the remainder of spring and summer. The proposed rule changes are to alleviate the supply shortage of live bait shrimp and croaker.

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

The proposed rule change may increase revenue collections to the Conservation Fund by an indeterminable amount due to a possible increase in the number of Special Bait Dealer Permits sold. The fee for such permit is \$110.

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

The proposed rule change would benefit permit holders and their vessel captains by allowing commercial establishments to apply for permits year-round; by allowing permitted activities throughout state waters during closed shrimp seasons; by allowing permitted activities to take place between sunset and sunrise provided permitted vessels are equipped with a working vessel monitoring system (VMS); and by allowing permit holders to use larger skimmer net frames to harvest live shrimp and live croaker. The proposed rule would also amend provisions that prohibit any person convicted of any "Class Two or greater wildlife and fisheries violation" within the previous three years prior to the application date from obtaining a special bait dealer's permit or be onboard any vessel engaged in permitted activities to prohibit any person convicted of any "Class Three or greater fisheries violation". The proposed rule would also prohibit sales of shrimp and croaker during closed shrimp seasons from vessels operating under the permit to anyone other than the licensed wholesale/retail seafood dealer listed on the permit.

Marine recreational fishermen may also benefit from the proposed rule due to increased availability of live shrimp and live croaker associated with these proposed rule changes as well as from the possibility of lower live bait prices.

The proposed rule change is anticipated to lower fuel costs and reduce the need to travel long distances to waters open to shrimping during inshore shrimp season closures of each year. Thus, receipts and/or net income to Special Bait Dealer's Permit holders and their vessel captains are anticipated to increase slightly due the rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have no impact on competition and employment in the public or private sectors.

Lois Azzarello  
Undersecretary  
1209#049

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Workforce Commission  
Office of Workers' Compensation**

Employer's Report of Injury/Illness  
Form LWC-WC-1A-1 (LAC 40:I:6647)

Notice is hereby given, in accordance with R.S. 49:950, et seq., that the Louisiana Workforce Commission, Office of

Workers' Compensation, pursuant to the authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to amend LAC 40:I:6647. The proposed amendments create the LWC-WC-IA-1 to replace the existing LWC-WC-1007. The amendments allow for the electronic submission of first reports of injury to the OWCA on the LWC-WC-IA-1 in accordance with R.S. 23:1306 which went into effect August 1, 2012.

**Title 40  
LABOR AND EMPLOYMENT  
Part I. Workers' Compensation Administration  
Subpart 3. Hearing Rules  
Chapter 66. Miscellaneous  
Subchapter E. Forms  
§6647. Employer's Report of Injury/Illness; Form  
LWC-WC-IA-1**

**Workers Compensation—First Report of Injury or Illness**

EMPLOYER (NAME & ADDRESS INCL ZIP)		CARRIER/ADMINISTRATOR CLAIM NUMBER	OSHA LOG NUMBER	REPORT PURPOSE CODE
		JURISDICTION	JURISDICTION CLAIM NUMBER	
		INSURED REPORT NUMBER		
		EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)		LOCATION #
INDUSTRY CODE	EMPLOYER FEIN			PHONE #
<b>CARRIER/CLAIMS ADMINISTRATOR</b>				
CARRIER (NAME, ADDRESS, & PHONE #)		POLICY PERIOD	CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO)	
		TO		
		CHECK IF APPROPRIATE		
		SELF INSURANCE		
CARRIER FEIN	POLICY/SELF-INSURED NUMBER			ADMINISTRATOR FEIN
AGENT NAME & CODE NUMBER				
<b>EMPLOYEE/WAGE</b>				
NAME (LAST, FIRST, MIDDLE)		DATE OF BIRTH	SOCIAL SECURITY NUMBER	DATE HIRED
				STATE OF HIRE
ADDRESS (INCL ZIP)		SEX	MARITAL STATUS	OCCUPATION/JOB TITLE
		M MALE	J UNMARRIED SINGLE/DIVORCED	EMPLOYMENT STATUS
		F FEMALE	M MARRIED	
		U UNKNOWN	S SEPARATED	
PHONE	# OF DEPENDENTS	K UNKNOWN	NCCI CLASS CODE	
RATE PER:	DAY WEEK	MONTH OTHER:	DAYS WORKED/WEEK	FULL PAY FOR DAY OF INJURY? DID SALARY CONTINUE?
				YES NO YES NO
<b>OCCURRENCE/TREATMENT</b>				
TIME EMPLOYEE BEGAN WORK	AM PM	DATE OF INJURY/ILLNESS	TIME OF OCCURRENCE ( ) CANNOT BE DETERMINED	AM PM
				LAST WORK DATE
CONTACT NAME/PHONE NUMBER		TYPE OF INJURY/ILLNESS		DATE EMPLOYER NOTIFIED
				DATE DISABILITY BEGAN
DID INJURY/ILLNESS/EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO		TYPE OF INJURY/ILLNESS CODE		PART OF BODY AFFECTED CODE
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED		WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED		

HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL				CAUSE OF INJURY CODE	
DATE RETURN(ED) TO WORK	IF FATAL, GIVE DATE OF DEATH	WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?	YES	NO	
		WERE THEY USED?	YES	NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)		HOSPITAL OR OFF SITE TREATMENT (NAME & ADDRESS)		INITIAL TREATMENT	
				0	NO MEDICAL TREATMENT
				1	MINOR: BY EMPLOYER
				2	MINOR CLINIC/HOSP
				3	EMERGENCY CARE
				4	HOSPITALIZED > 24 HOURS
				5	FUTURE MAJOR MEDICAL/ LOST TIME ANTICIPATED
<b>OTHER</b>					
WITNESSES (NAME & PHONE #)					
DATE ADMINISTRATOR NOTIFIED		DATE PREPARED	PREPARER'S NAME & TITLE	PHONE NUMBER	
FORM IA-1(r 1-1-02)				IAIABC 2002	

LWC-WC-IA-1-Rev 12/2012

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1310.1.

**HISTORICAL NOTE:** Promulgated by the Louisiana Workforce Commission, Office of Workers Compensation, LR 38:

**Family Impact Statement**

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. This proposed Rule shall not have any impact on the six criteria set out in R.S. 49:972(D).

**Small Business Statement**

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

**Public Comments**

Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040., Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 20 days from the publication of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the department within 20 days of the publication of this notice.

**Public Hearing**

A public hearing will be held on October 25, 2012, at 9 a.m. at the LWC Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

Curt Eysink  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Employer's Report of Injury/Illness  
Form LWC-WC-1A-1**

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

The proposed amendments alter the existing form LWC-WC-1007, which is the form by which Employers currently report an injury or illness. The amendments allow for the electronic submission of first reports of injury on a new form LWC-WC-IA-1 to the Office of Workers' Compensation Administration (OWCA) in accordance with LSA-R.S. 23:1306 (as amended by Act 141 of 2012) to be consistent with the International Association of Industrial Accident Boards and Commissions (IAIABC). The employer will utilize the Form IA-1 in place of the Form 1007 to electronically report to their carrier/self-insured employer. Per the statute, the option for employers to mail the form to OWCA will be retained until December 31, 2013, after which electronic submission will be mandatory.

The OWCA will not experience any additional expense due to the alteration of these forms, including the capturing of expanded information, nor will it experience material savings from the elimination of the mail-in option. The proposed form LWC-WC-IA-1 will be made available online and as such no massive re-printing of the forms will be necessary.

The Division of Administration indicates that the proposed rule will have no fiscal impact on the Office of Risk Management.

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

The implementation of the form LWC-WC-IA-1 will have no anticipated effect on revenue collections of state or local governmental units.

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

For all affected parties, the proposed changes will allow for the form IA-1, Employer's Report of Injury/Illness, to be submitted through an electronic data interchange consistent with the International Association of Industrial Accident Boards and Commissions (IAIABC). The proposed

amendments will result in updates to forms that are and will continue to be made available online.

The employer will be tasked with submitting the LWC-WC-IA-1 to their carrier/self-insured employer, who will then submit the form to the OWCA. The standardized forms will update existing, self-generated forms and no additional costs are anticipated, beyond basic internet access and an email account. The preparer will be required to compile more detailed information than that required by the current form LWC-WC-1007.

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

There is no anticipated direct effect on competition and employment.

Wes Hataway  
Director  
1209#037

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Workforce Commission  
Office of Workers' Compensation**

**Utilization Review Procedures  
(LAC 40:I.2715)**

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedures Act, proposes to amend LAC 40:I.2715 and 2718. The proposed amendments alter the

existing utilization review rules and forms. The amendments correct an error in a statutory reference within the rules. The amendments also change the Social Security number requirement on the form LWC-WC-1010 to require only the last four digits of the employee's Social Security number for added security. The amendments also add the Medical Services Section's designated fax number for filing a form LWC-WC-1010 suspension appeal.

**Title 40**

**LABOR AND EMPLOYMENT**

**Part I. Workers' Compensation Administration**

**Subpart 2. Medical Guidelines**

**Chapter 27. Utilization Review Procedures**

**§2715. Medical Treatment Schedule Authorization and Dispute Resolution**

A. - N.1. ...

2. Disputes over change of physician will be resolved in accordance with R.S. 23:1121.

O. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1203.1.

**HISTORICAL NOTE:** Promulgated by the Department of Employment and Training, Office of Worker' Compensation, LR 17:263 (March 1992), repromulgated LR 17:653 (July 1991), repromulgated LR 18:257 (March 1992), amended by the Workforce Commission, Office of Worker' Compensation, LR 38:1030 (April 2012), repromulgated LR 38:1287 (May 2012, amended LR 38:

**§2718. Utilization Review Forms**

A. LWC Form 1010—Request of Authorization/Carrier or Self Insured Employer Response

<b>LWC FORM 1010—REQUEST OF AUTHORIZATION/ CARRIER OR SELF INSURED EMPLOYER RESPONSE PLEASE PRINT OR TYPE</b>					
<b>SECTION 1. IDENTIFYING INFORMATION - To Be Filled Out By Health Care Provider</b>					
<b>PATIENT</b>	Last Name: First: Middle:		Street Address, City, State, Zip:		
	Last Four Digits of Social Security Number:	Date of Birth:	Phone Number:	Date of Injury:	
	Employers Name:		Street Address, City, State, Zip:	Phone Number:	
<b>CARRIER</b>	Name:		Adjuster:	Claim Number (if known):	
	Street Address, City, State Zip:		Email Address:	Phone Number:	Fax Number:
<b>SECTION 2. REQUEST FOR AUTHORIZATION - To Be Filled Out By Health Care Provider</b>					
<b>PROVIDER</b>	Requesting Health Care Provider		Phone Number:	Fax Number:	
	Street Address, City, State Zip:			Email:	
	Diagnosis:		CPT/DRG Code:	ICD-9/DMS-4 Code:	



	Requested Treatment or Testing (Attach Supplement If Needed):
	Reason for Treatment or Testing (Attach Supplement If Needed):

**INFORMATION REQUIRED BY RULE TO BE INCLUDED WITH REQUEST FOR AUTHORIZATION  
To Be Filled Out By Health Care Provider**

(Following is the required minimum information for Request of Authorization (LAC 40:2715 (C))

<b>PROVIDER</b>	<input type="checkbox"/>	History provided to the level of condition and as provided by Medical Treatment Schedule
	<input type="checkbox"/>	Physical Findings/Clinical Tests
	<input type="checkbox"/>	Documented functional improvements from prior treatment
	<input type="checkbox"/>	Test/imaging results
	<input type="checkbox"/>	Treatment Plan including services being requested along with the frequency and duration
I hereby certify that this completed form and above required information was		to the Carrier/Self Insured Employer on this the
<input type="checkbox"/>		_____ day of _____, _____
Faxed		(day) (month) (year)
<input type="checkbox"/>		
Emailed		
<b>Signature of Health Care Provider:</b>		<b>Printed Name:</b>

**SECTION 3. RESPONSE OF CARRIER/SELF INSURED EMPLOYER FOR AUTHORIZATION**  
(Check appropriate box below and return to requesting Health Care Provider, Claimant and Claimant Attorney as provided by rule)

<b>CARRIER</b>	<input type="checkbox"/>	The requested Treatment or Testing is <b>approved</b>
	<input type="checkbox"/>	The requested Treatment or Testing is <b>approved with modifications</b> (Attach summary of reasons and explanation of any modifications)
	<input type="checkbox"/>	The requested Treatment or Testing is <b>denied</b> because
	<input type="checkbox"/>	Not in accordance with Medical Treatment Schedule or R.S.23:1203.1(D) (Attach summary of reasons)

	<input type="checkbox"/>	The request, or a portion thereof, is not related to the on-the-job injury
	<input type="checkbox"/>	The claim is being denied as non-compensable
	<input type="checkbox"/>	Other (Attach brief explanation)
I hereby certify that this response of Carrier/Self Insured Employer for Authorization was	<input type="checkbox"/> Faxed	to the Health Care Provider (and to the Attorney of Claimant if one exists, if denied or approved with modification) on this the _____ day of _____, _____ (day) (month) (year)
	<input type="checkbox"/> Emailed	
<b>Signature of Carrier/Self Insured Employer:</b>		<b>Printed Name:</b>
<input type="checkbox"/> The prior <b>denied</b> or <b>approved with modification</b> request is now <b>approved</b>		
I hereby certify that this response of Carrier/Self Insured Employer for Authorization was	<input type="checkbox"/> Faxed	to the Health Care Provider and Attorney of Claimant if one exists on this the _____ day of _____, _____ (day) (month) (year)
	<input type="checkbox"/> Emailed	
<b>Signature of Carrier/Self Insured Employer:</b>		<b>Printed Name:</b>
<b>SECTION 4. FIRST REQUEST</b>		
(Form 1010A is required to be filled out by Carrier/Self Insured Employer and Health Care Provider)		
<b>CARRIER</b>	<input type="checkbox"/> The requested Treatment or Testing is delayed because minimum information required by rule was not provided	
	I hereby certify that this First Request and accompanying Form 1010A was	<input type="checkbox"/> Faxed

		<input type="checkbox"/>	Emailed	
	<b>Signature of Carrier/Self Insured Employer:</b>			
PROVIDER	I hereby certify that a response to the First Request and accompanying Form 1010A was	<input type="checkbox"/>	Faxed	to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
		<input type="checkbox"/>	Emailed	
<b>Signature of Health Care Provider:</b>			<b>Printed Name:</b>	
<b>SECTION 5. SUSPENSION OF PRIOR AUTHORIZATION DUE TO LACK OF INFORMATION</b>				
CARRIER	Suspension of Prior Authorization Process due to Lack of Information			
	I hereby certify that the requested Treatment or Testing is delayed due to a Suspension of Prior Authorization Due to Lack of Information			
	I hereby certify that this Suspension of Prior Authorization was	<input type="checkbox"/>	Faxed	to the Health Care Provider on this the _____ day of _____, _____ (day) (month) (year)
		<input type="checkbox"/>	Emailed	
<b>Signature of Carrier/Self Insured Employer:</b>			<b>Printed Name:</b>	
PROVIDER	Appeal of Suspension to Medical Services Section by Health Care Provider			
	I hereby certify that this form and all information previously submitted to Carrier/Self Insured Employer was faxed to OWCA Medical Services (Fax Number: 225-342-9836) this _____ day of _____, _____.			
	I hereby certify that this Appeal of Suspension of Prior Authorization was	<input type="checkbox"/>	Faxed	to the Carrier/Self Insured Employer on this the _____ day of _____, _____ (day) (month) (year)
		<input type="checkbox"/>	Emailed	

	<b>Signature of Health Care Provider:</b>	<b>Printed Name:</b>	
<b>SECTION 6. DETERMINATION OF MEDICAL SERVICES SECTION</b>			
<b>OWCA</b>	<input type="checkbox"/> The required information of LAC40:2715(C) <i>was not</i> provided		
	<input type="checkbox"/> The required information of LAC40:2715(C) <i>was</i> provided		
	I hereby certify that a written determination was	<input type="checkbox"/> Faxed  <input type="checkbox"/> Emailed	to the Health Care Provider & Carrier/Self Insured Employer on this the ____ day of ____, ____ (day) (month) (year)
	<b>Signature:</b>		<b>Printed Name:</b>
<b>SECTION 7. HEALTH CARE PROVIDER RESPONSE TO MEDICAL SERVICES DETERMINATION</b>			
<b>PROVIDER</b>	I hereby certify that additional information, pursuant to the determination of Medical Services Section, was	<input type="checkbox"/> Faxed  <input type="checkbox"/> Emailed	to the Carrier/Self Insured Employer on this the ____ day of ____, ____ (day) (month) (year)
	<b>Signature of Health Care Provider:</b>		<b>Printed Name:</b>

B. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with RS 23:1203.1.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workers' Compensation, LR 38:1037 (April 2012), amended LR 38:

**Family Impact Statement**

Implementation of this proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on any family formation, stability, and autonomy. This proposed Rule shall not have any impact on the six criteria set out in R.S. 49:972(D).

**Small Business Statement**

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of

applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

**Public Comments**

Interested parties may submit data, views, arguments, information or comments on the proposed amendment in writing to the Louisiana Workforce Commission, Office of Workers' Compensation, P.O. Box 94040, Baton Rouge, Louisiana 70804-9040., Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the department within 20 days from the publication of this notice.

**Public Hearing**

A public hearing will be held on October 25, 2012, 9 a.m. at the LWC Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

Curt Eysink  
Executive Director

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

**RULE TITLE: Utilization Review Procedures**

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

The proposed amendments alter the existing Utilization Review Rules and Forms. The amendments also change the social security number requirements on the form LWC-WC-1010 to require only the last four digits of the Employee's social security number for added security. The amendments also add the Medical Services Sections designated fax number to the form 1010. This number will be used by the Providers when filing a form 1010 suspension appeal.

The Office of Workers' Compensation (OWC) will not experience any additional expense due to the amendments and alteration of these forms. The proposed amendment to the existing form LWC-WC-1010 will be made available online and as such no re-printing of the forms will be necessary.

The Division of Administration indicates that the proposed rule will have no fiscal impact on the Office of Risk Management.

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

The implementation of the amendments to the form LWC-WC-1010 and the change to the statutory reference error within the Utilization Review Rules will have no anticipated effect on revenue collections of state or local governmental units.

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

Carriers/Self-Insured Employers, medical providers, and injured workers' or their representative will be tasked with following the Utilization Review Rules which includes the use of the form LWC-WC-1010. The proposed amendments will result in updates to forms that are and will continue to be made available online. The reporting burden is not significantly different than that currently imposed.

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

There is no anticipated direct affect on competition and employment.

Wes Hataway  
Director  
1209#038

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Agriculture and Forestry Horticulture Commission

#### Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 3, 2012, beginning at 9 a.m. at the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee November 16, 2012.

Further information pertaining to the examinations may be obtained from Tad Hardy, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to November 16, 2012. Questions may be directed to (225) 952-8100.

Mike Strain, DVM  
Commissioner

1209#096

## POTPOURRI

### Department of Environmental Quality Office of the Secretary

#### Public Hearing—Substantive Changes—PM<sub>2.5</sub> Increments, Significant Impact Levels and Significant Monitoring Concentration (LAC 33:III.509)(AQ328ftS)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to the proposed amendments to various regulations, LAC 33:III.509 (Log #AQ328ftS), which was originally noticed as AQ328ft in the March 20, 2012 issue of the *Louisiana Register*. (1209Pot1)

The department has made substantive changes to address comments received during the public comment period of proposed Rule AQ328ft. This substantive change revises language dealing with significant impact levels (SILS) for PM<sub>2.5</sub> which was proposed as LAC 33:III.509.K.2. EPA's authority to implement the PM<sub>2.5</sub> SILS is presently the subject of litigation. In light of this litigation, LDEQ will not adopt LAC 33:III.509.K.2 as proposed. This language will be stricken from the proposed Rule. Because of the removal of Paragraph K.2, all references will also be revised. In addition, the department seeks to change the definitions of *baseline area* and *baseline date* to reflect the changes made by EPA as published at 75 FR 64903.

A strikeout/underline/shaded version of the proposed Rule that distinguishes original proposed language from substantively changed language is available on the Internet at [www.deq.louisiana.gov](http://www.deq.louisiana.gov) under Rules and Regulations.

A public hearing on the substantive changes will be held on October 31, 2012, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation by OS083S. Such comments must be received no later than October 31, 2012, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ328ftS. These proposed regulations are available on the internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

These substantive changes are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM  
Executive Counsel

1209#032

## POTPOURRI

### Department of Natural Resources Office of Coastal Management Interagency Affairs/Field Services Division

#### Review of Federal Financial Assistance—Awards for Consistency with the Louisiana Coastal Resources Program

Federal regulations at 15 CFR §930.90 et seq., require that state and local government bodies applying for federal grants, loans, guarantees, insurance, or other form of financial assistance, must submit to the Office of Coastal Management (OCM) a request for review of that assistance for consistency with the Louisiana Coastal Resources Program (LCRP). In order to streamline the review procedure to ensure response to all requests in a timely and appropriate manner, OCM has made the following determination.

Effective October 1, 2012, this office finds that the granting of any financial assistance as defined at 15 CFR §930.91, is consistent with the Louisiana Coastal Resources Program (LCRP). No further coordination with this office is necessary on the matter of the consistency of federal assistance with the LCRP.

This determination does not change the requirements for obtaining a coastal use permit, consistency concurrence, or other authorization from this office for the actual implementation of projects receiving federal assistance, if the project may affect the Louisiana Coastal Zone. OCM continues to review applications for projects which may have reasonably foreseeable coastal effects. Applicants seeking guidance on the need to obtain a coastal use permit or other authorization from OCM, for projects in or near to the Louisiana Coastal Zone, should contact the OCM's Permits and Mitigation Division, by calling (225) 342-7591 or (800) 267-4019; by mail at P.O. Box 44487, Baton Rouge, LA 70804.

The Office of Coastal Management may find it necessary to change or rescind the provisions of this announcement. In that event, OCM will publish notices in the *Louisiana Register*, the official state journal (the Baton Rouge Advocate) and on the Department of Natural Resources web page.

For more information, contact Jeff Harris, Coastal Resources Scientist, Office of Coastal Management, Interagency Affairs/Field Services Division, at (225) 342-7949. This notice is available on the internet at <http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5>.

Keith Lovell  
Acting Administrator

1209#014

### POTPOURRI

#### Department of Natural Resources Office of Conservation

#### Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Cryer, Mcdonald and Halbouty	Caddo Pine Island	S	Muslow	002	33751
Cryer and Halbouty	Caddo Pine Island	S	Muslow	001	32571
Jimmy Roberson Energy Corp.	Redland	S	G W Roberson	001	59560

Operator	Field	District	Well Name	Well Number	Serial Number
Jimmy Roberson Energy Corp.	Redland	S	G W Roberson	003	60618
Jimmy Roberson Energy Corp.	Redland	S	G W Roberson	005	64534
Jimmy Roberson Energy Corp.	Carterville	S	Roberson	001	142689
Jimmy Roberson Energy Corp.	Carterville	S	Roberson A Swd	001	149323
Jimmy Roberson Energy Corp.	Bancroft, South	L	Boise Southern	001	169131
Jimmy Roberson Energy Corp.	Redland	S	Roberson	001	173096
Jimmy Roberson Energy Corp.	Redland	S	Roberson	002	173097
Jimmy Roberson Energy Corp.	Indian Lake	M	Chicago Mill B	001	173251
Jimmy Roberson Energy Corp.	Redland	S	Roberson	003	175042
Jimmy Roberson Energy Corp.	Redland	S	Roberson	004	175065
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Jimmy Roberson Energy Corp.	Redland	S	Roberson B	001	192374
Jimmy Roberson Energy Corp.	Bivens, Northwest	L	Justice Neely	001	202284

James H. Welsh  
Commissioner

1209#011

### POTPOURRI

#### Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

#### Underground Obstruction Latitude/Longitude Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 2 claims in the amount of \$9,840.92 were received for payment during the period August 1, 2012-August 31, 2012.

There were 0 paid and 2 denied.

Latitude/longitude coordinates, in degree decimal minutes, of reported underwater obstructions are:

29 06.320	90 10.300	Lafourche
29 35.812	89 34.794	Plaquemines

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-9388.

Stephen Chustz  
Secretary

1209#035

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