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Executive Orders

EXECUTIVE ORDER BJ 14-12

Freedom of Speech Protections for Louisiana Teachers

WHEREAS, the United States Constitution and the Louisiana Constitution guarantee to every individual the freedom of speech and protection from government abridgment of that right;

WHEREAS, this same freedom and protection under the law extends to every teacher in every classroom across the state of Louisiana;

WHEREAS, teachers are the backbone of Louisiana's educational system and offer a necessary voice in the ongoing discussions regarding classroom curriculum and testing procedures and must be afforded the opportunity to offer this crucial perspective;

WHEREAS, in 2008, the Governor made part of his legislative package and signed into law Act No. 155 of the 2008 Legislative Session, expanding the Teacher's Bill of Rights to further the rights guaranteed to teachers, to strengthen immunity from legal retaliation, and to provide awareness of these rights to the education profession, the community, parents and students; and

WHEREAS, teachers must continue to work in an environment where they are able to speak freely and to provide public awareness of issues with curriculum and testing materials encountered in the classroom, free from punitive remedies and in accordance with their commitment to the education of the children of Louisiana, and as guaranteed by the United States Constitution, the Louisiana Constitution, and other laws of this state.

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 part of the ongoing discussion among state and local education officials, teachers, parents, and stakeholders regarding classroom curriculum and testing, and as part of the larger discussion of the quality of Louisiana's educational system, legal guarantees afforded to all citizens shall be maintained and provided to teachers.

SECTION 2: State and local school administration officials are not authorized under the existing laws of this state to deny a teacher's constitutional freedom of speech in order to stifle the discussion and debate surrounding curriculum and standardized assessments by teachers.

SECTION 3: All departments, commissions, boards, agencies, and political subdivisions of the state are authorized and directed to cooperate with the implementations of the provisions of this Order.

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 8th day of October, 2014.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1410#085

Emergency Rules

DECLARATION OF EMERGENCY

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs—TOPS Core Curriculum Equivalent (LAC 28:IV.703)

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 adds Law Studies as a course equivalent to world history, western civilization, world geography and history of religion in the tops core curriculum for students who graduate from high school during the 2013-2014 academic year (high school).

This rulemaking adds certain courses taught by the New Orleans Center for Creative Arts (NOCCA) as course equivalents to designated courses in the TOPS core curriculum for students who graduate from NOCCA.

The Emergency Rule is necessary to implement changes to the scholarship/grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LASFAC has determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective September 16, 2014, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG15156E)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards
§703. Establishing Eligibility

A. - A.5.a.ii.(c). …

* * *

(d).(i). For students graduating in academic year (high school) 2010-2011 through academic year (high school) 2016-17, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I, Applied Algebra I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III, Applied Geometry
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Math - Pre-Calculus**, Advanced Math - Functions and Statistics***
Chemistry	Chemistry Com
Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit;	Anatomy and Physiology
Fine Arts Survey	Speech III and Speech IV (both units)
Western Civilization	European History
World Geography	AP Human Geography
Civics	AP American Government
*Applied Mathematics III was formerly referred to as Applied Geometry **Advanced Math—Pre-Calculus was formerly referred to as Advanced Mathematics II ***Advanced Math—Functions and Statistics was formerly referred to as Advanced Mathematics II	

(ii). For students graduating in academic year (high school) 2013-2014 only, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, in addition to the equivalent courses identified in §703.A.5.(a).ii.(d).(i) above, the following course shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
World History, Western Civilization, World Geography or History of Religion	Law Studies

ii.(e). - iii.(b). …

* * *

iv. Beginning with academic year (high school) 2013-2014, for purposes of satisfying the requirements of §703.A.5.a.i above, in addition to the courses identified in §703.A.5.a.ii, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses for students of the New Orleans Center for Creative Arts.

Core Curriculum Course	Equivalent (Substitute) Course
English I	NOCCA Integrated English I
English II	NOCCA Integrated English II
English III	NOCCA Integrated English III

Core Curriculum Course	Equivalent (Substitute) Course
English IV`	NOCCA Integrated English IV
Algebra I	NOCCA Integrated Mathematics I
Geometry	NOCCA Integrated Mathematics II
Algebra II)	NOCCA Integrated Mathematics III
Advanced Math – Functions and Statistics	NOCCA Integrated Mathematics IV
Physical Science	NOCCA Integrated Science I
Biology	NOCCA Integrated Science II
Environmental Science	NOCCA Integrated Science III
Chemistry	NOCCA Integrated Science IV
World Geography	NOCCA Integrated History I
World History	NOCCA Integrated History II
Civics	NOCCA Integrated History III
U. S. History	NOCCA Integrated History IV

A.5.b. - J.4.b.ii. …

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 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011), LR 38:354 (February 2012), LR 38:3158 (December 2012), LR 39:481 (March 2013), LR 39:2485 (September 2013), LR 40:54 (January 2014), LR 40:

George Badge Eldredge
General Counsel

1410#009

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Office of Group Benefits

Prior Authorization Requirements, Benefit Limits, Pharmacy Benefits Formulary (LAC 32:I.1701)

Pursuant to the authority granted by R.S. 42:801(C) and 802(B)(6), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to chapter 12 of title 42 of the *Louisiana Revised Statutes*, and granting the power to adopt and promulgate rules with respect thereto, OGB, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

OGB finds that imminent peril to the public health, safety, or welfare requires it to revise and amend certain of its general provisions including to prior authorization requirements, benefit limits, and the pharmacy benefits. R.S. 42:803(B) grants authority to OGB to establish a self-funded health benefits program and establish plan(s) of benefits for employees under the direction of the commissioner of administration. The plan documents in effect for OGB self-funded plans (PPO, HMO, and CDHP) and the LAC 32:III.423 (PPO) state that changes shall be made from "time-to-time" to the plans and "such modifications will be promulgated subject to the applicable provisions of law." While no applicable law expressly requires promulgation for such changes to be effective between enrollees and OGB, this Rule is being promulgated due to the imminent peril of financial exposure of the state, OGB, its plan enrollees, and other state programs resulting from a threat of litigation that rules are required to be promulgated by law. According to OGB, the OGB fund balance will be as low as $8,000,000 by July 2015 if these and other changes are not implemented. The OGB fund, in the absence of these changes through December 2014, will be depleted by $194,300 per day and $231,819 per day from January to June 2015. This daily loss causes an imminent peril by accelerating the need to impose increases of 18 percent or greater in premiums according to the LFO. These and other resulting costs to enrollees could become so burdensome for enrollees that they drop their health coverage. The fund is now facing the imminent peril of becoming actuarially unsound and unstable. Moreover, if the OGB fund goes into a deficit, then taxpayers are statutorily required to pay the costs of any increase in premiums to enrollees. Consequently, other state programs will be impacted through the resulting budget cuts to higher education and health care which will result in a reduction in critical services for all citizens of the state. Accordingly, the following Emergency Rule, revising and amending the general provisions, is effective September 30, 2014, and shall remain in effect for a maximum of 120 days, or until a final Rule is promulgated, whichever occurs first.

Title 32
EMPLOYEE BENEFITS
Part I. General Provisions
Chapter 17. Emergency Provisions
§1701. Prior Authorization Requirements, Benefit Limits, Pharmacy Benefits Formulary

A. Changes for the PPO, HMO, and CDHP 2014 plans of benefits have been adopted which affect medical and pharmacy benefits and drug utilization.

B. Medical Benefits

1. A prior authorization is a process used to determine the necessity of a proposed service or procedure and is a standard means used by health plans to manage health care utilization. To avoid extra costs, enrollees should always ensure that their health care providers obtain a prior authorization when necessary for a covered benefit.

2. In addition to any services previously identified in the 2014 plan documents or these rules, services that will now require prior authorization, include, but are not limited to:

a. cardiac rehabilitation;
b. CT scans;
c. genetic testing;
d. home health care;
e. hospice;

f. MRI/MRA;

g. orthotic devices;

h. outpatient pain rehabilitation/pain control programs;

i. physical /occupational therapy;

j. residential treatment centers;

k. inpatient hospital admissions (except routine maternity stays).

3. An updated summary of benefits and coverage (SBC) with a complete list of services and procedures requiring prior authorizations shall be available to OGB enrollees through its third-party administrator (TPA) and the OGB website.

4. In addition to any limits previously identified in 2014 plan documents or these rules, OGB self-funded plans will follow the pharmacy benefit formulary's standard for number of visits allowed per benefit period for skilled nursing facilities, home health care services and hospice care services. An updated summary of benefits and coverage (SBC) shall be made available to enrollees through the OGB TPA and through the OGB website.

C. Pharmacy Benefits Formulary. OGB shall have discretion to adopt its PBM pharmacy benefits formulary or other drug formulary. The formulary will be reviewed on a quarterly basis to reassess drug tiers based on the current prescription drug market. The formulary may be changed from time to time, subject to any applicable advance notice requirements. The amount enrollees pay toward prescription medications will depend on whether a generic, preferred brand, non-preferred brand name, or specialty drug is obtained. Formulary changes for members with Medicare as their primary coverage shall be effective January 1, 2015. For maintenance medication, 90-day prescriptions may be filled at retail pharmacies for two and a half times the cost of the co-pay. Medications available over-the-counter in the same prescribed strength, are no longer covered under the pharmacy plan. The pharmacy co-payment threshold is changed from $1,200 to $1,500. Additional changes include:

	Prior Benefit	New Benefit
Before co-payment threshold satisfied:		
Generic	50% up to $50	50% up to $30
Preferred	50% up to $50	50% up to $55
Non-Preferred	50% up to $50	65% up to $80
Specialty	50% up to $50	50% up to $80
After co-payment threshold satisfied:		
Generic	$0 co-pay	$0 co-pay
Preferred	$15 co-pay	$20 co-pay
Non-Preferred	$15 co-pay	$40 co-pay
Specialty	$15 co-pay	$40 co-pay

D. Drug Utilization Management

1. Clinical utilization management through prior authorizations for certain medications, the use of step therapy and quantity limitations to promote appropriate utilization of prescription medications and use of generic medications.

2. High cost compound management to promote the use of commercially available, lower cost, individual compound medications instead of high cost compound medications.

3. Medical foods exclusion as the FDA does not currently have safety or efficacy evaluation standards for them as they are not regulated as drugs.

4. Review the usage of narcotic medications such as opiates and acetaminophen to prevent their over and/or improper usage.

5. Polypharmacy management identification and case management for members receiving multiple prescriptions to ascertain and implement appropriate consolidation of medication therapy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(6).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Susan T. West
Chief Executive Officer, Office of Group Benefits
and
Ruth Johnson
Deputy Commissioner, Division of Administration

1410#018

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Applied Behavior Analysis-Based Therapy Services
(LAC 50:XV.Chapters 1-7)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapters 1-7 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 promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver in order to provide for the allocation of waiver opportunities to Medicaid-eligible children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation (hereafter referred to as Chisholm class members) who have a diagnosis of pervasive developmental disorder or autism spectrum disorder, and are in need of applied behavior analysis-based (ABA) therapy services. (*Louisiana Register*, Volume 39, Number 10). This action was taken as a temporary measure to ensure Chisholm class members would have access to ABA therapy services as soon as possible.

To ensure continued, long-lasting access to ABA-based therapy services for Chisholm class members and other children under the age of 21, the department promulgated an Emergency Rule which adopted provisions to establish coverage and reimbursement for ABA-based therapy services under the Medicaid State Plan (*Louisiana Register*, Volume 40, Number 2). The department has now determined

that it is necessary to amend the provisions of the February 1, 2014 Emergency Rule to ensure compliance with all of the provisions required by the court order issued in *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation.

This action is being taken to avoid imminent peril to the public health and welfare of children who are in immediate need of ABA-based therapy services, and to comply with the judge's order that these services be provided to Chisholm class members.

Effective October 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2014 Emergency Rule governing applied behavior analysis services to clarify these provisions.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Applied Behavior Analysis-Based Therapy Services

Chapter 1. General Provisions

§101. Program Description and Purpose

A. Applied behavior analysis-based (ABA) therapy is the design, implementation, and evaluation of environmental modification using behavioral stimuli and consequences to produce socially significant improvement in human behavior, including the direct observation, measurement, and functional analysis of the relations between environment and behavior. ABA-based therapies teach skills through the use of behavioral observation and reinforcement or prompting to teach each step of targeted behavior. ABA-based therapies are based on reliable evidence and are not experimental.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§103. Recipient Criteria

A. In order to qualify for ABA-based therapy services, a Medicaid recipient must meet the following criteria. The recipient must:

1. be from birth up to 21 years of age;

2. exhibit the presence of excesses and/or deficits of behaviors that significantly interfere with home or community activities (examples include, but are not limited to aggression, self-injury, elopement, impaired development in the areas of communication and/or social interaction, etc.);

3. be diagnosed by a qualified health care professional with a condition for which ABA-based therapy services are recognized as therapeutically appropriate, including autism spectrum disorder; and

4. have a comprehensive diagnostic evaluation that prescribes and/or recommends ABA services that is conducted by a qualified health care professional.

5. - 6. Repealed.

B. All of the criteria in §103.A must be met to receive services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 3. Services

§301. Covered Services and Limitations

A. Medicaid covered ABA-based therapy services must be:

1. medically necessary;

2. prior authorized by the Medicaid Program or its designee; and

3. delivered in accordance with the recipient's treatment plan.

B. Services must be provided directly or billed by behavior analysts licensed by the Louisiana Behavior Analyst Board.

C. Medical necessity for ABA-based therapy services shall be determined according to the provisions of the *Louisiana Administrative Code* (LAC), Title 50, Part I, Chapter 11 (*Louisiana Register*, Volume 37, Number 1).

D. ABA-based therapy services may be prior authorized for a time period not to exceed 180 days. Services provided without prior authorization shall not be considered for reimbursement, except in the case of retroactive Medicaid eligibility.

E. Service Limitations

1. Services shall be based upon the individual needs of the child, and must give consideration to the child's age, school attendance requirements, and other daily activities as documented in the treatment plan.

2. Services must be delivered in a natural setting (e.g., home and community-based settings, including schools and clinics).

a. Services delivered in a school setting must not duplicate services rendered under an individualized family service plan (IFSP) or an individualized educational program (IEP) as required under the federal Individuals with Disabilities Education Act (IDEA).

3. Any services delivered by direct line staff must be under the supervision of a lead behavior therapist who is a Louisiana licensed behavior analyst.

F. Not Medically Necessary/Non-Covered Services. The following services do not meet medical necessity criteria, nor qualify as Medicaid covered ABA-based therapy services:

1. therapy services rendered when measureable functional improvement or continued clinical benefit is not expected, and therapy is not necessary for maintenance of function or to prevent deterioration;

2. services that are primarily educational in nature;

3. services delivered outside of the school setting that are duplicative services under an individualized family service plan (IFSP) or an individualized educational program (IEP), as required under the federal Individuals with Disabilities Education Act (IDEA);

4. treatment whose purpose is vocationally- or recreationally-based;

5. custodial care:

a. for purposes of these provisions, *custodial care*:

i. shall be defined as care that is provided primarily to assist in the activities of daily living (ADLs), such as bathing, dressing, eating, and maintaining personal hygiene and safety;

ii. is provided primarily for maintaining the recipient's or anyone else's safety; and

iii. could be provided by persons without professional skills or training; and

6. services, supplies, or procedures performed in a non-conventional setting including, but not limited:

a. resorts;

b. spas;

c. therapeutic programs; and

d. camps.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§303. Treatment Plan

A. ABA-based therapy services shall be rendered in accordance with the individual's treatment plan. The treatment plan shall:

1. be person-centered and based upon individualized goals;

2. be developed by a licensed behavior analyst;

3. delineate both the frequency of baseline behaviors and the treatment development plan to address the behaviors;

4. identify long, intermediate, and short-term goals and objectives that are behaviorally defined;

5. identify the criteria that will be used to measure achievement of behavior objectives;

6. clearly identify the schedule of services planned and the individual providers responsible for delivering the services;

7. include care coordination involving the parents or caregiver(s), school, state disability programs, and others as applicable;

8. include parent/caregiver training, support, and participation;

9. have objectives that are specific, measureable, based upon clinical observations, include outcome measurement assessment, and tailored to the individual; and

10. ensure that interventions are consistent with ABA techniques.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 5. Provider Participation

§501. General Provisions

A. ABA-based therapy services must be provided by or under the supervision of a behavior analyst who is currently licensed by the Louisiana Behavior Analyst Board, or a licensed psychologist, or a licensed medical psychologist.

B. Licensed behavior analysts that render ABA-based therapy services shall meet the following provider qualifications:

1. be licensed by the Louisiana Behavior Analyst Board;

2. be covered by professional liability insurance to limits of $1,000,000 per occurrence, $1,000,000 aggregate;

3. have no sanctions or disciplinary actions on their board certified behavior analyst (BCBA®) or board certified behavior analyst-doctoral (BCBA-D) certification and/or state licensure;

4. not have Medicare/Medicaid sanctions, or be excluded from participation in federally funded programs (i.e., Office of Inspector General's list of excluded individuals/entities (OIG-LEIE), system for award management (SAM) listing and state Medicaid sanctions listings); and

5. have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the behavior analyst is currently working and residing.

a. Criminal background checks must be performed at the time of hire and at least five years thereafter.

b. Background checks must be current, within a year prior to the initial Medicaid enrollment application. Background checks must be performed at least every five years thereafter.

C. Certified assistant behavior analyst that render ABA-based therapy services shall meet the following provider qualifications:

1. must be certified by the Louisiana Behavior Analyst Board;

2. must work under the supervision of a licensed behavior analyst;

a. the supervisory relationship must be documented in writing;

3. must have no sanctions or disciplinary actions, if state-certified or board-certified by the BACB®;

4. may not have Medicare or Medicaid sanctions, or be excluded from participation in federally funded programs (i.e., Office of Inspector General's list of excluded individuals/entities (OIG-LEIE), system for award management (SAM) listing and state Medicaid sanctions listings); and

5. have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the certified assistant behavior analyst is currently working and residing.

a. Evidence of this background check must be provided by the employer.

b. Criminal background checks must be performed at the time of hire and an update performed at least every five years thereafter.

D. Registered line technicians that render ABA-based therapy services shall meet the following provider qualifications:

1. must be registered by the Louisiana Behavior Analyst Board;

2. must work under the supervision of a licensed behavior analyst:

a. the supervisory relationship must be documented in writing;

3. may not have Medicaid or Medicare sanctions or be excluded from participation in federally funded programs (OIG-LEIE listing, SAM listing and state Medicaid sanctions listings); and

4. have a completed criminal background check to include federal criminal, state criminal, parish criminal and sex offender reports for the state and parish in which the certified assistant behavior analyst is currently working and residing.

a. Evidence of this background check must be provided by the employer.

b. Criminal background checks must be performed at the time of hire and an update performed at least every five years thereafter.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 7. Reimbursements

§701. General Provisions

A. The Medicaid Program shall provide reimbursement for ABA-based therapy services to enrolled behavior analysts who are currently licensed and in good standing with the Louisiana Behavior Analyst Board. Reimbursement shall only be made for services billed by a licensed behavior analyst, licensed psychologist, or licensed medical psychologist.

B. Reimbursement for ABA services shall not be made to, or on behalf of services rendered by, a parent, a legal guardian or legally responsible person.

C. Reimbursement shall only be made for services authorized by the Medicaid Program or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§703. Reimbursement Methodology

A. Reimbursement for ABA-based therapy services shall be based upon a percentage of the commercial rates for ABA-based therapy services in the state of Louisiana. The rates are based upon 15 minute units of service, with the exception of mental health services plan which shall be reimbursed at an hourly fee rate.

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, LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#053

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Coordinated Care Network
Recipient Participation
(LAC 50:I.3103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.3103 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 amended provisions governing coordinated care networks (CCNs) to permit certain individuals who receive waiver services authorized under the provisions of 1915(b) and 1915(c) of the Social Security Act, and Medicaid eligible children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation (hereafter referred to as *Chisholm* class members) to have the option of voluntarily enrolling into a participating health plan under the BAYOU HEALTH Program (*Louisiana Register*, Volume 40, Number 6).

The department promulgated an Emergency Rule which amended the provisions governing the June 20, 2014 Rule to exclude *Chisholm* class member participation in CCNs to allow sufficient time for CCNs to amend the current contracts to meet the requirements of the *Chisholm* judgment (*Louisiana Register*, Volume 40, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule.This action is being taken to promote the health and welfare of recipients participating in the BAYOU HEALTH program.

Effective November 18, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing CCNs to clarify recipient participation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 3. Medicaid Coordinated Care

Chapter 31. Coordinated Care Network

§3103. Recipient Participation

A. - A.3. ...

B. Voluntary Participants

1. Participation in a CCN is voluntary for:

a. - b.iv. ...

v. enrolled in the Family Opportunity Act Medicaid Buy-In Program; and

c. individuals who receive home and community-based waiver services.

d. - 2. Repealed.

C. ...

D. Participation Exclusion

1. The following Medicaid and/or CHIP recipients are excluded from participation in a CCN and cannot voluntarily enroll in a CCN. Individuals who:

a. - e. ...

f. are eligible through the Tuberculosis Infected Individual Program;

g. are enrolled in the Louisiana Health Insurance Premium Payment (LaHIPP) Program; or

h. are under 21 years of age and are listed on the new opportunities waiver request for services registry (*Chisholm* class members).

i. For purposes of these provisions, Chisholm class members shall be defined as those children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* (or her successor) class action litigation.

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, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 40:310 (February 2014), LR 40:1096 (June 2014), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Crisis Receiving Centers
Licensing Standards
(LAC 48:I.Chapters 53 and 54)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 48:I.Chapters 53 and 54 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:2180.14. 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 promulgated an Emergency Rule to adopt provisions to establish licensing standards for free-standing level III crisis receiving centers (CRCs) in order to provide intervention and crisis stabilization services for individuals who are experiencing a behavioral health crisis (*Louisiana Register*, Volume 39, Number 4). The department now proposes to amend the provisions of the April 20, 2013 Emergency Rule in order to clarify the provisions governing the licensing standards for free-standing CRCs. This action is being taken to prevent imminent peril to the public health, safety or welfare of behavioral health clients who are in need of crisis stabilization services.

Effective October 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the April 20, 2013 Emergency Rule governing the licensing standards for level III crisis receiving centers.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. General Administration
Subpart 3. Licensing and Certification
Chapter 53. Level III Crisis Receiving Centers
Subchapter A. General Provisions
§5301. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment, and enforcement of statewide licensing standards for the care of patients and clients in level III crisis receiving centers (CRCs);

2. ensure the maintenance of these standards; and

3. regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of behavioral health facilities.

B. The purpose of a CRC is to provide intervention and stabilization services in order for the client to achieve stabilization and be discharged and referred to the lowest appropriate level of care that meets the client's needs. The estimated length of stay in a CRC is 3-7 days.

C. In addition to the requirements stated herein, all licensed CRCs shall comply with applicable local, state, and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5303. Definitions

Active Client—a client of the CRC who is currently receiving services from the CRC.

Administrative Procedure Act—R.S. 49:950 et seq.

Administrative Review—Health Standards Section's review of documentation submitted by the center in lieu of an on-site survey.

Adult—a person that is at least 18 years of age.

Authorized Licensed Prescriber—a physician or nurse practitioner licensed in the state of Louisiana and with full prescriptive authority authorized by the CRC to prescribe treatment to clients of the specific CRC at which he/she practices.

Building and Construction Guidelines—structural and design requirements applicable to a CRC; does not include occupancy requirements.

Coroner's Emergency Certificate (CEC)—a certificate issued by the coroner pursuant to R.S. 28:53.3.

Change of Ownership (CHOW)—the sale or transfer, whether by purchase, lease, gift or otherwise, of a CRC by a person/corporation of controlling interest that results in a change of ownership or control of 30 percent or greater of either the voting rights or assets of a CRC or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the CRC.

CLIA—Clinical Laboratory Improvement Amendment.

Client Record—a single complete record kept by the CRC which documents all treatment provided to the client. The record may be electronic, paper, magnetic material, film or other media.

Construction Documents—building plans and specifications.

Contraband—any object or property that is against the CRC's policies and procedures to possess.

*Level III Crisis Receiving Center (*or *Center* or *CRC)*—an agency, business, institution, society, corporation, person or persons, or any other group, licensed by the Department of Health and Hospitals to provide crisis identification, intervention and stabilization services for people in behavioral crisis. A CRC shall be no more than 24 beds.

Crisis Receiving Services—services related to the treatment of people in behavioral crisis, including crisis identification, intervention and stabilization.

Department—the Louisiana Department of Health and Hospitals.

Direct Care Staff—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as direct care staff.

Disaster or *Emergency*—a local, community-wide, regional or statewide event that may include, but is not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

Division of Administrative Law (DAL)—the Louisiana Department of State Civil Service, *Division of Administrative Law* or its successor entity.

Grievance—a formal or informal written or verbal complaint that is made to the CRC by a client or the client's family or representative regarding the client's care, abuse or neglect when the complaint is not resolved at the time of the complaint by staff present.

HSS—the Department of Health and Hospitals, Office of the Secretary, Office of Management and Finance, Health Standards Section.

Human Services Field—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

Licensed Mental Health Professional (LMHP)—an individual who is licensed in the state of Louisiana to diagnose and treat mental illness or substance abuse, acting within the scope of all applicable state laws and their professional license. A LMHP must be one of the following individuals licensed to practice independently:

1. a physician/psychiatrist;
2. a medical psychologist;
3. a licensed psychologist;
4. a licensed clinical social worker (LCSW);
5. a licensed professional counselor (LPC);
6. a licensed marriage and family therapist (LMFT);
7. a licensed addiction counselor (LAC);
8. an advanced practice registered nurse or APRN (must be a nurse practitioner specialist in adult psychiatric and mental health or family psychiatric and mental health);
9. a certified nurse specialist in one of the following:
   a. psychosocial, gerontological psychiatric mental health;
   b. adult psychiatric and mental health; or
   c. child-adolescent mental health.

LSBME—Louisiana State Board of Medical Examiners.

MHERE—mental health emergency room extension operating as a unit of a currently-licensed hospital.

Minor—a person under the age of 18.

OBH—the Department of Health and Hospitals, Office of Behavioral Health.

On Duty—scheduled, present, and awake at the site to perform job duties.

On Call—immediately available for telephone consultation and less than one hour from ability to be on duty.

OHSEP—Office of Homeland Security and Emergency Preparedness.

OPC—order for protective custody issued pursuant to R.S. 28:53.2.

OSFM—the Louisiana Department of Public Safety and Corrections, Office of State Fire Marshal.

PEC—an emergency certificate executed by a physician, psychiatric mental health nurse practitioner, or psychologist pursuant to R.S. 28:53.

Physician—an individual who holds a medical doctorate or a doctor of osteopathy from a medical college in good standing with the LSBME and a license, permit, certification, or registration issued by the LSBME to engage in the practice of medicine in the state of Louisiana.

Qualifying Experience—experience used to qualify for any position that is counted by using one year equals 12 months of full-time work.

Seclusion Room—a room that may be secured in which one client may be placed for a short period of time due to the client's increased need for security and protection.

Shelter in Place—when a center elects to stay in place rather than evacuate when located in the projected path of an approaching storm equal to or greater than tropical storm strength.

Sleeping Area—a single constructed room or area that contains a minimum of three beds.

Tropical Storm Strength—a tropical cyclone in which the maximum sustained surface wind speed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph 17.5 m/s) to 63 kt (73 mph 32.5 mps).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter B. Licensing

§5309. General Licensing Provisions

A. All entities providing crisis receiving services shall be licensed by the Department of Health and Hospitals (DHH). It shall be unlawful to operate as a CRC without a license issued by the department. DHH is the only licensing authority for CRCs in Louisiana.

B. A CRC license authorizes the center to provide crisis receiving services.

C. The following entities are exempt from licensure under this Chapter:

1. community mental health centers;
2. hospitals;
3. nursing homes;
4. psychiatric rehabilitative treatment facilities;
5. school-based health centers;
6. therapeutic group homes;
7. HCBS agencies;
8. substance abuse/addictive disorder facilities;
9. mental health clinics;
10. center-based respites;
11. MHEREs;
12. individuals certified by OBH to provide crisis intervention services; and
13. federally-owned facilities.

D. A CRC license is not required for individual or group practice of LMHPs providing services under the auspices of their individual professional license(s).

E. A CRC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the CRC to which it is issued and only for the geographic address of that CRC approved by DHH;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the CRC;
5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

F. In order for the CRC to be considered operational and retain licensed status, the following applicable operational requirements shall be met. The CRC shall:

1. be open and operating 24 hours per day, 7 days per week;
2. have the required staff on duty at all times to meet the needs of the clients; and
3. be able to screen and either admit or refer all potential clients at all times.

G. The licensed CRC shall abide by any state and federal law, rule, policy, procedure, manual or memorandum pertaining to crisis receiving centers.

H. The CRC shall permit designated representatives of the department, in the performance of their duties, to:

1. inspect all areas of the center's operations; and
2. conduct interviews with any staff member, client, or other person as necessary.

I. CRC Names

1. A CRC is prohibited from using:
   a. the same name as another CRC;
   b. a name that resembles the name of another center;
   c. a name that may mislead the client or public into believing it is owned, endorsed, or operated by the state of Louisiana when it is not owned, endorsed, or operated by the state of Louisiana.

J. Plan Review

1. Any entity that intends to operate as a CRC, except one that is converting from a MHERE or an existing CRC, shall complete the plan review process and obtain approval for its construction documents for the following types of projects:
   a. new construction;
   b. any entity that intends to operate and be licensed as a CRC in a physical environment that is not currently licensed as a CRC; or
   c. major alterations.
2. The CRC shall submit one complete set of construction documents with an application and review fee to the OSFM for review. Plan review submittal to the OSFM shall be in accordance with R.S. 40:1574, and the current *Louisiana Administrative Code* (LAC) provisions governing fire protection for buildings (LAC 55:V.Chapter 3 as of this promulgation), and the following criteria:
   a. any change in the type of license shall require review for requirements applicable at the time of licensing change;
   b. requirements applicable to occupancies, as defined by the most recently state-adopted edition of *National Fire Protection Association (NFPA) 101*, where services or treatment for four or more patients are provided;
   c. requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101; and
   d. the specific requirements outlined in the Physical Environment requirements of this Chapter.
3. Construction Document Preparation
   a. The CRC's construction documents shall be prepared by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed.
   b. The CRC's construction documents shall be of an architectural or engineering nature and thoroughly illustrate an accurately drawn and dimensioned project that contains noted plans, details, schedules and specifications.
   c. The CRC shall submit at least the following in the plan review process:
      i. site plans;
      ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;
      iii. building elevations;
      iv. room finish, door, and window schedules;
      v. details pertaining to Americans with Disabilities Act (ADA) requirements; and
      vi. specifications for materials.
4. Upon OSFM approval, the CRC shall submit the following to DHH:
   a. the final construction documents approved by OSFM; and
   b. OSFM's approval letter.

K. Waivers

1. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the state *Sanitary Code*.
2. In order to request a waiver, the CRC shall submit a written request to HSS that demonstrates:

a. how patient safety and quality of care offered is not comprised by the waiver;

b. the undue hardship imposed on the center if the waiver is not granted; and

c. the center's ability to completely fulfill all other requirements of service.

3. DHH will make a written determination of each waiver request.

4. Waivers are not transferable in an ownership change or geographic change of location, and are subject to review or revocation upon any change in circumstances related to the waiver.

5. DHH prohibits waivers for new construction.

L. A person or entity convicted of a felony or that has entered a guilty plea or a plea of nolo contendere to a felony is prohibited from being the CRC or owner, clinical supervisor or any managing employee of a CRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5311. Initial Licensure Application Process

A. Any entity, organization or person interested in operating a crisis receiving center must submit a completed initial license application packet to the department for approval. Initial CRC licensure application packets are available from HSS.

B. A person/entity/organization applying for an initial license must submit a completed initial licensing application packet which shall include:

1. a completed CRC licensure application;

2. the non-refundable licensing fee as established by statute;

3. the approval letter of the architectural center plans for the CRC from OSFM, if the center must go through plan review;

4. the on-site inspection report with approval for occupancy by the OSFM, if applicable;

5. the health inspection report from the Office of Public Health (OPH);

6. a statewide criminal background check, including sex offender registry status, on all owners and managing employees;

7. except for governmental entities or organizations, proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least $100,000;

b. general and professional liability insurance of at least $500,000; and

c. worker's compensation insurance;

8. an organizational chart and names, including position titles, of key administrative personnel and the governing body;

9. a legible floor sketch or drawing of the premises to be licensed;

10. a letter of intent indicating whether the center will serve minors or adults and the center's maximum number of beds;

11. if operated by a corporate entity, such as a corporation or an limited liability corporation (LLC), current proof of registration and status with the Louisiana Secretary of State's office;

12. a letter of recommendation from the OBH regional office or its designee; and

13. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant shall:

1. be notified of the missing information; and

2. be given 90 days from receipt of the notification to submit the additional requested information or the application will be closed.

D. Once the initial licensing application is approved by DHH, notification of such approval shall be forwarded to the applicant.

E. The applicant shall notify DHH of initial licensing survey readiness within the required 90 days of receipt of application approval. If an applicant fails to notify DHH of initial licensing survey readiness within 90 days, the application will be closed.

F. If an initial licensing application is closed, an applicant who is still interested in operating a CRC must submit a:

1. new initial licensing packet; and

2. non-refundable licensing fee.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the CRC will be issued an initial license to operate.

H. An entity that intends to become a CRC is prohibited from providing crisis receiving services to clients during the initial application process and prior to obtaining a license, unless it qualifies as one of the following facilities:

1. a hospital-based CRC;

2. an MHERE;

3. an MHERE that has communicated its intent to become licensed as a CRC in collaboration with the department prior to February 28, 2013; or

4. a center-based respite.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5313. Initial Licensing Surveys

A. Prior to the initial license being issued, an initial licensing survey shall be conducted on-site to ensure compliance with the licensing laws and standards.

B. If the initial licensing survey finds that the center is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center.

C. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, and the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department:

1. may issue a provisional initial license for a period not to exceed six months; and

2. shall require the center to submit an acceptable plan of correction.

a. The department may conduct a follow-up survey following the initial licensing survey after receipt of an acceptable plan of correction to ensure correction of the deficiencies. If all deficiencies are corrected on the follow-up survey, a full license will be issued.

b. If the center fails to correct the deficiencies, the initial license may be denied.

E. The initial licensing survey of a CRC shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5315. Types of Licenses

A. The department has the authority to issue the following types of licenses.

1. Initial License

a. The department shall issue a full license to the CRC when the initial licensing survey indicates the center is compliant with:

i. all licensing laws and regulations;

ii. all other required statutes, laws, ordinances, rules, regulations; and

iii. fees.

b. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

2. Provisional Initial License

a. The department may issue a provisional initial license to the CRC when the initial licensing survey finds that the CRC is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

i. The center shall submit a plan of correction to the department for approval, and the center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

ii. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

iii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

3. Renewal License. The department may issue a renewal license to a licensed CRC that is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department may issue a provisional license to a licensed CRC for a period not to exceed six months.

a. A provisional license may be issued for the following reasons:

i. more than five deficiencies cited during any one survey;

ii. four or more validated complaints in a consecutive 12-month period;

iii. a deficiency resulting from placing a client at risk for serious harm or death;

iv. failure to correct deficiencies within 60 days of notification of such deficiencies, or at the time of a follow-up survey; or

v. failure to be in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

b. The department may extend the provisional license for an additional period not to exceed 90 days in order for the center to correct the deficiencies.

c. The center shall submit an acceptable plan of correction to DHH and correct all noncompliance or deficiencies prior to the expiration of the provisional license.

d. The department shall conduct a follow-up survey of the CRC, either on-site or by administrative review, prior to the expiration of the provisional license.

e. If the follow-up survey determines that the CRC has corrected the deficiencies and has maintained compliance during the period of the provisional license, the department may issue a license that will expire on the expiration date of the most recent renewal or initial license.

f. The provisional license shall expire if:

i. the center fails to correct the deficiencies by the follow-up survey; or

ii. the center is cited with new deficiencies at the follow-up survey indicating a risk to the health, safety, or welfare of a client.

g. If the provisional license expires, the center shall be required to begin the initial licensing process by submitting a:

i. new initial license application packet; and

ii. non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5317. Changes in Licensee Information or Personnel

A. Within five days of the occurrence, the CRC shall report in writing to HSS the following changes to the:

1. CRC's entity name;
2. business name;
3. mailing address; or
4. telephone number.

B. Any change to the CRC's name or "doing business as" name requires a $25 nonrefundable fee for the issuance of an amended license with the new name.

C. A CRC shall report any change in the CRC's key administrative personnel within five days of the change.

1. Key administrative personnel include the:

a. CRC manager;

b. clinical director; and

c. nurse manager.

2. The CRC's notice to the department shall include the incoming individual's:

a. name;

b. date of appointment to the position; and

c. qualifications.

D. Change of Ownership (CHOW)

1. A CRC shall report a CHOW in writing to the department at least five days prior to the change. Within five days following the change, the new owner shall submit:

a. the legal CHOW document;

b. all documents required for a new license; and

c. the applicable nonrefundable licensing fee.

2. A CRC that is under license revocation, provisional licensure, or denial of license renewal may not undergo a CHOW.

3. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

E. Change in Physical Address

1. A CRC that intends to change the physical address of its geographic location shall submit:

a. a written notice to HSS of its intent to relocate;

b. a plan review request;

c. a new license application;

d. a nonrefundable license fee; and

e. any other information satisfying applicable licensing requirements.

2. In order to receive approval for the change of physical address, the CRC must:

a. have a plan review approval;

b. have approval from OSFM and OPH recommendation for license;

c. have an approved license application packet;

d. be in compliance with other applicable licensing requirements; and

e. have an on-site licensing survey prior to relocation of the center.

3. Upon approval of the requirements for a change in physical address, the department shall issue a new license to the CRC.

F. Any request for a duplicate license shall be accompanied by a $25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5319. Renewal of License

A. A CRC license expires on the expiration date listed on the license, unless timely renewed by the CRC.

B. To renew a license, the CRC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet includes:

1. the license renewal application;

2. a current State Fire Marshal report;

3. a current OPH inspection report;

4. the non-refundable license renewal fee;

5. any other documentation required by the department; and

6. except for governmental entities or organizations, proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least $100,000;

b. general and professional liability insurance of at least $500,000; and

c. worker's compensation insurance.

C. The department may perform an on-site survey and inspection of the center upon renewal.

D. Failure to submit a completed license renewal application packet prior to the expiration of the current license will result in the voluntary non-renewal of the CRC license upon the license's expiration.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the center.

F. If a licensed CRC has been issued a notice of license revocation or suspension, and the center's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

G. Voluntary Non-Renewal of a License

1. If a center fails to timely renew its license, the license:

a. expires on the license's expiration date; and

b. is considered a non-renewal and voluntarily surrendered.

2. There is no right to an administrative reconsideration or appeal from a voluntary surrender or non-renewal of the license.

3. If a center fails to timely renew its license, the center shall immediately cease providing services, unless the center is actively treating clients, in which case the center shall:

a. within two days of the untimely renewal, provide written notice to HSS of the number of clients receiving treatment at the center;

b. within two days of the untimely renewal, provide written notice to each active client's prescribing physician and to every client, or, if applicable, the client's parent or legal guardian, of the following:

i. voluntary non-renewal of license;

ii. date of closure; and

iii. plans for the transition of the client;

c. discharge and transition each client in accordance with this Chapter within 15 days of the license's expiration date; and

d. within 30 days of the license's expiration date, notify HSS of the location where records will be stored in compliance with federal and state laws and the name, address, and phone number of the person responsible for the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5321. Licensing Surveys

A. The department may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing crisis receiving centers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. If deficiencies are cited, the department may require the center to submit an acceptable plan of correction.

C. The department may conduct a follow-up survey following any survey in which deficiencies were cited to ensure correction of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5323. Complaint Surveys

A. Pursuant to R.S. 40:2009.13 et seq., the department has the authority to conduct unannounced complaint surveys on crisis receiving centers.

B. The department shall issue a statement of deficiency to the center if it finds a deficiency during the complaint survey.

C. Plan of Correction

1. Once the department issues a statement of deficiencies, the department may require the center to submit an acceptable plan of correction.

2. If the department determines that other action, such as license revocation, is appropriate, the center:

a. may not be required to submit a plan of correction; and

b. will be notified of such action.

D. Follow up Surveys

1. The department may conduct a follow-up survey following a complaint survey in which deficiencies were cited to ensure correction of the deficient practices.

2. If the department determines that other action, such as license revocation, is appropriate:

a. a follow-up survey is not necessary; and

b. the center will be notified of such action.

E. Informal Reconsiderations of Complaint Surveys

1. A center that is cited with deficiencies found during a complaint survey has the right to request an informal reconsideration of the deficiencies. The center's written request for an informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

2. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review.

3. Correction of the violation or deficiency shall not be the basis for the reconsideration.

4. The center shall be notified in writing of the results of the informal reconsideration.

5. Except for the right to an administrative appeal provided in R.S. 40:2009.16, the informal reconsideration shall constitute final action by the department regarding the complaint survey, and there shall be no further right to an administrative appeal.

F. - F.2.b. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5325. Statement of Deficiencies

A. The CRC shall make any statement of deficiencies available to the public upon request after the center submits a plan of correction that is accepted by the department or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

B. Informal Reconsiderations

1. Unless otherwise provided in statute or in this Chapter, a CRC has the right to an informal reconsideration of any deficiencies cited as a result of a survey.

2. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

3. The center's written request for informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. HSS shall notify the center in writing of the results of the informal reconsideration.

6. Except as provided pursuant to R.S. 40:2009.13 et seq., and as provided in this Chapter:

a. the informal reconsideration decision is the final administrative decision regarding the deficiencies; and

b. there is no right to an administrative appeal of such deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5327. Cessation of Business

A. Except as provided in §5407 of these licensing regulations, a license shall be immediately null and void if a provider ceases to operate.

1. - 3. Repealed.

B. A cessation of business is deemed to be effective the date on which the provider stopped offering or providing services to the community.

C. Upon the cessation of business, the provider shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the provider. The provider does not have a right to appeal a cessation of business.

E. A CRC that intends to cease operations shall:

1. provide 30 days advance written notice to HSS and the active client, or if applicable, the client's parent(s), legal guardian, or designated representative; and

2. discharge and transition all clients in accordance with this Chapter.

F. The provider shall notify the department in writing 30 days prior to the effective date of the closure or cessation. In addition to the notice, the provider shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure;

2. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's patients medical records;

3. an appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction;

4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 days prior to the effective date of closure.

G. If a CRC fails to follow these procedures, the department may prohibit the owners, managers, officers, directors, and/or administrators from opening, managing, directing, operating, or owning a CRC for a period of two years.

H. Once the provider has ceased doing business, the provider shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5329. Sanctions

A. The department may issue sanctions for deficiencies and violations of law, rules and regulations that may include, but are not limited to:

1. ...
2. directed plans of correction;
3. provisional licensure; and/or
4. license revocation or denial of license renewal.

B. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the Administrative Procedure Act.

C. The department may deny an initial license, revoke a license or deny a license renewal for any of the following reasons, including but not limited to:

1. failure to be in compliance with the CRC licensing laws, rules and regulations;
2. failure to be in compliance with other required statutes, laws, ordinances, rules or regulations;
3. failure to comply with the terms and provisions of a settlement agreement or education letter;
4. cruelty or indifference to the welfare of the clients;
5. misappropriation or conversion of the property of the clients;
6. permitting, aiding or abetting the unlawful, illicit or unauthorized use of drugs or alcohol within the center of a program;
7. documented information of past or present conduct or practices of an employee or other staff which are detrimental to the welfare of the clients, including but not limited to:
   a. illegal activities; or
   b. coercion or falsification of records;
8. failure to protect a client from a harmful act of an employee or other client including, but not limited to:
   a. mental or physical abuse, neglect, exploitation or extortion;
   b. any action posing a threat to a client's health and safety;
   c. coercion;
   d. threat or intimidation;
   e. harassment; or
   f. criminal activity;
9. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in subsection D.8 above;
10. knowingly making a false statement in any of the following areas, including but not limited to:
   a. application for initial license or renewal of license;
   b. data forms;
   c. clinical records, client records or center records;
   d. matters under investigation by the department or the Office of the Attorney General; or
   e. information submitted for reimbursement from any payment source;
11. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;
12. the use of false, fraudulent or misleading advertising; or
13. the CRC, an owner, officer, member, manager, administrator, Medical Director, managing employee, or clinical supervisor has pled guilty or nolo contendere to a felony, or is convicted of a felony, as documented by a certified copy of the record of the court;
14. failure to comply with all reporting requirements in a timely manner, as required by the department;
15. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or clients;
16. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;
17. failure to allow or refusal to allow access to center or client records by authorized departmental personnel;
18. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular CRC;
19. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;
20. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department; or
21. failure to uphold client rights that may have resulted or may result in harm, injury or death of a client.
22. Repealed.

D. If the department determines that the health and safety of a client or the community may be at risk, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The department will provide written notification to the center if the imposition of the action will be immediate.

E. Any owner, officer, member, manager, director or administrator of such CRC is prohibited from owning, managing, directing or operating another CRC for a period of two years from the date of the final disposition of any of the following:

1. license revocation;
2. denial of license renewal; or
3. the license is surrendered in lieu of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5331. Notice and Appeal of License Denial, License Revocation and Denial of License Renewal

A. The department shall provide written notice to the CRC of the following:

1. license denial;

2. license revocation; or

3. denial of license renewal.

B. The CRC has the right to an administrative reconsideration of the license denial, license revocation or denial of license renewal.

1. If the CRC chooses to request an administrative reconsideration, the request must:

a. be in writing addressed to HSS;

b. be received by HSS within 15 days of the center's receipt of the notice of the license denial, license revocation or denial of license renewal; and

c. include any documentation that demonstrates that the determination was made in error.

2. If a timely request for an administrative reconsideration is received, HSS shall provide the center with written notification of the date of the administrative reconsideration.

3. The center may appear in person at the administrative reconsideration and may be represented by counsel.

4. HSS shall not consider correction of a deficiency or violation as a basis for the reconsideration.

5. The center will be notified in writing of the results of the administrative reconsideration.

C. The administrative reconsideration process is not in lieu of the administrative appeals process.

D. The CRC has a right to an administrative appeal of the license denial, license revocation or denial of license renewal.

1. If the CRC chooses to request an administrative appeal, the request must:

a. be received by the DAL within 30 days of:

i. the receipt of the results of the administrative reconsideration; or

ii. the receipt of the notice of the license denial, revocation or denial of license renewal, if the CRC chose to forego its rights to an administrative reconsideration;

b. be in writing;

c. include any documentation that demonstrates that the determination was made in error; and

d. include the basis and specific reasons for the appeal.

2. The DAL shall not consider correction of a violation or a deficiency as a basis for the administrative appeal.

E. Administrative Appeals of License Revocations and Denial of License Renewals

1. If a timely request for an administrative appeal is received by the DAL, the center will be allowed to continue to operate and provide services until the DAL issues a final administrative decision.

F. Administrative Appeals of Immediate License Revocations or Denial of License Renewals

1. If DHH imposes an immediate license revocation or denial of license renewal, DHH may enforce the revocation or denial of license renewal during the appeal process.

2. If DHH chooses to enforce the revocation or denial of license renewal during the appeal process, the center will not be allowed to operate and/or provide services during the appeal process.

G. If a licensed CRC has a pending license revocation, and the center's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

H. Administrative Hearings of License Denials, Denial of License Renewals and License Revocations

1. If a timely administrative appeal is submitted by the center, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

2. If the final DAL decision is to reverse the license denial, denial of license renewal or license revocation, the center's license will be re-instated upon the payment of any outstanding fees or sanctions fees due to the department.

3. If the final DAL decision is to affirm the denial of license renewal or license revocation, the center shall:

a. discharge and transition any and all clients receiving services according to the provisions of this Chapter;

b. comply with the requirements governing cessation of business in this Chapter; and

c. notify HSS within 10 days of closure of the location where the records will be stored and the name, address and phone number of the person responsible for the records.

I. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new CRC, or the issuance of a provisional license to a licensed CRC.

J. Administrative Reconsiderations and Administrative Appeals of the Expiration of a Provisional Initial License or Provisional License

1. A CRC with a provisional initial license, or a provisional license that expires due to deficiencies cited at the follow-up survey, has the right to request an administrative reconsideration and/or an administrative appeal of the deficiencies cited at the follow-up survey.

2. The center's request for an administrative reconsideration must:

a. be in writing;

b. be received by the HSS within five calendar days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the administrative reconsideration.

3. Correction of a violation or deficiency after the follow-up survey will not be considered as the basis for the administrative reconsideration or for the administrative appeal.

4. The issue to be decided in the administrative reconsideration and the administrative appeal is whether the deficiencies were properly cited at the follow-up survey.

5. The CRC's request for an administrative appeal must:

a. be in writing;

b. be submitted to the DAL within 15 calendar days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the appeal.

6. A center with a provisional initial license or a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge or transition clients unless the DAL or successor entity issues a stay of the expiration.

a. To request a stay, the center must submit its written application to the DAL at the time the administrative appeal is filed.

b. The DAL shall hold a contradictory hearing on the stay application. If the center shows that there is no potential harm to the center's clients, then the DAL shall grant the stay.

7. Administrative Hearing

a. If the CRC submits a timely request for an administrative hearing, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

b. If the final DAL decision is to remove all deficiencies, the department will reinstate the center's license upon the payment of any outstanding fees and settlement of any outstanding sanctions due to the department.

c. If the final DAL decision is to uphold the deficiencies, thereby affirming the expiration of the provisional license, the center shall discharge any and all clients receiving services in accordance with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter C. Organization and Administration

§5337. General Provisions

A. Purpose and Organizational Structure. The CRC shall develop and implement a statement maintained by the center that clearly defines the purpose of the CRC. The statement shall include:

1. the program philosophy;
2. the program goals and objectives;
3. the ages, sex and characteristics of clients accepted for care;
4. the geographical area served;
5. the types of services provided;
6. the admission criteria;
7. the needs, problems, situations or patterns addressed by the provider's program; and
8. an organizational chart of the provider which clearly delineates the lines of authority.

B. The CRC shall provide supervision and services that:

1. conform to the department's rules and regulations;
2. meet the needs of the client as identified and addressed in the client's treatment plan;
3. protect each client's rights; and
4. promote the social, physical and mental well-being of clients.

C. The CRC shall maintain any information or documentation related to compliance with this Chapter and shall make such information or documentation available to the department.

D. Required Reporting. The center shall report the following incidents in writing to HSS within 24 hours of discovery:

1. any disaster or emergency or other unexpected event that causes significant disruption to program operations;
2. any death or serious injury of a client:
   a. that may potentially be related to program activities; or
   b. who at the time of his/her death or serious injury was an active client of the center; and
3. allegations of client abuse, neglect, exploitation and misappropriation of client funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5339. Governing Body

A. A crisis receiving center shall have the following:

1. an identifiable governing body with responsibility for and authority over the policies and operations of the center;
2. documents identifying the governing body's:
   a. members;
   b. contact information for each member;
   c. terms of membership;
   d. officers; and
   e. terms of office for each officer.

B. The governing body of a CRC shall:

1. be comprised of one or more persons;
2. hold formal meetings at least twice a year;
3. maintain written minutes of all formal meetings of the governing body; and
4. maintain by-laws specifying frequency of meetings and quorum requirements.

C. The responsibilities of a CRC's governing body include, but are not limited to:

1. ensuring the center's compliance with all federal, state, local and municipal laws and regulations as applicable;
2. maintaining funding and fiscal resources to ensure the provision of services and compliance with this Chapter;
3. reviewing and approving the center's annual budget;
4. designating qualified persons to act as CRC manager, clinical director and nurse manager, and delegating these persons the authority to manage the center;
5. at least once a year, formulating and reviewing, in consultation with the CRC manager, clinical director and nurse manager, written policies concerning:
   a. the provider's philosophy and goals;
   b. current services;
   c. personnel practices and job descriptions; and
   d. fiscal management;
6. evaluating the performances of the CRC manager, clinical director and nurse manager at least once a year;
7. meeting with designated representatives of the department whenever required to do so;
8. informing the department, or its designee, prior to initiating any substantial changes in the services provided by the center; and
9. ensuring statewide criminal background checks are conducted as required in this Chapter and state law.

D. A governing body shall ensure that the CRC maintains the following documents:

1. minutes of formal meetings and by-laws of the governing body;

2. documentation of the center's authority to operate under state law;

3. all leases, contracts and purchases-of-service agreements to which the center is a party;

4. insurance policies;

5. annual operating budgets;

6. a master list of all the community resources used by the center;

7. documentation of ownership of the center;

8. documentation of all accidents, incidents, abuse/neglect allegations; and

9. a daily census log of clients receiving services.

E. The governing body of a CRC shall ensure the following with regards to contract agreements to provide services for the center.

1. The agreement for services is in writing.

2. Every written agreement is reviewed at least once a year.

3. The deliverables are being provided as per the agreement.

4. The center retains full responsibility for all services provided by the agreement.

5. All services provided by the agreement shall:

a. meet the requirements of all laws, rules and regulations applicable to a CRC; and

b. be provided only by qualified providers and personnel in accordance with this Chapter.

6. If the agreement is for the provision of direct care services, the written agreement specifies the party responsible for screening, orientation, ongoing training and development of and supervision of the personnel providing services pursuant to the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5341. Policies and Procedures

A. Each CRC shall develop, implement and comply with center-specific written policies and procedures governing all requirements of this Chapter, including, but not limited to, the following areas:

1. protection of the health, safety, and wellbeing of each client;

2. providing treatment in order for clients to achieve optimal stabilization;

3. access to care that is medically necessary;

4. uniform screening for patient placement and quality assessment, diagnosis, evaluation, and referral to appropriate level of care;

5. operational capability and compliance;

6. delivery of services that are cost-effective and in conformity with current standards of practice;

7. confidentiality and security of all client information, records and files;

8. prohibition of illegal or coercive inducement, solicitation and kickbacks;

9. client rights;

10. grievance process;

11. emergency preparedness;

12. abuse and neglect;

13. incidents and accidents, including medical emergencies;

14. universal precautions;

15. documentation of services;

16. admission, including descriptions of screening and assessment procedures;

17. transfer and discharge procedures;

18. behavior management;

19. infection control;

20. transportation;

21. quality assurance;

22. medical and nursing services;

23. emergency care;

24. photography and video of clients; and

25. contraband.

B. A center shall develop, implement and comply with written personnel policies in the following areas:

1. recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff including volunteers;

2. written job descriptions for each staff position, including volunteers;

3. conducting staff health assessments that are consistent with OPH guidelines and indicate whether, when and how staff have a health assessment;

4. an employee grievance procedure;

5. abuse reporting procedures that require:

a. staff to report any allegations of abuse or mistreatment of clients pursuant to state and federal law; and

b. staff to report any allegations of abuse, neglect, exploitation or misappropriation of a client to DHH;

6. a non-discrimination policy;

7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor, CRC manager or clinical director as soon as possible to prevent the spread of disease or illness to other individuals;

8. procedures to ensure that only qualified personnel are providing care within the scope of the center's services;

9. policies governing staff conduct and procedures for reporting violations of laws, rules, and professional and ethical codes of conduct;

10. policies governing staff organization that pertain to the center's purpose, setting and location;

11. procedures to ensure that the staff's credentials are verified, legal and from accredited institutions; and

12. obtaining criminal background checks.

C. A CRC shall comply with all federal and state laws, rules and regulations in the implementation of its policies and procedures.

D. Center Rules

1. A CRC shall:

a. have a clearly written list of rules governing client conduct in the center;

b. provide a copy of the center's rules to all clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission; and

c. post the rules in an accessible location in the center.

E. The facility shall develop, implement and comply with policies and procedures that:

1. give consideration to the client's chronological and developmental age, diagnosis, and severity of illness when assigning a sleeping area or bedroom;

2. ensure that each client has his/her own bed; and

3. prohibit mobile homes from being used as client sleeping areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter D. Provider Operations

§5347. Client Records

A. The CRC shall ensure:

1. a single client record is maintained for each client according to current professional standards;

2. policies and procedures regarding confidentiality of records, maintenance, safeguarding and storage of records are developed, implemented and followed;

3. safeguards are in place to prevent unauthorized access, loss, and destruction of client records;

4. when electronic health records are used, the most up to date technologies and practices are used to prevent unauthorized access;

5. records are kept confidential according to federal and state laws and regulations;

6. records are maintained at the center where the client is currently active and for six months after discharge;

7. six months post-discharge, records may be transferred to a centralized location for maintenance;

8. client records are directly and readily accessible to the clinical staff caring for the client;

9. a system of identification and filing is maintained to facilitate the prompt location of the client's record;

10. all record entries are dated, legible and authenticated by the staff person providing the treatment, as appropriate to the media;

11. records are disposed of in a manner that protects client confidentiality;

12. a procedure for modifying a client record in accordance with accepted standards of practice is developed, implemented and followed;

13. an employee is designated as responsible for the client records;

14. disclosures are made in accordance with applicable state and federal laws and regulations; and

15. client records are maintained at least six years from discharge.

B. Record Contents. The center shall ensure that client records, at a minimum, contain the following:

1. the treatment provided to the client;

2. the client's response to the treatment;

3. other information, including:

a. all screenings and assessments;

b. provisional diagnoses;

c. referral information;

d. client information/data such as name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;

e. documentation of incidents that occurred;

f. attendance/participation in services/activities;

g. treatment plan that includes the initial treatment plan plus any updates or revisions;

h. lab work (diagnostic laboratory and other pertinent information, when indicated);

i. documentation of the services received prior to admission to the CRC as available;

j. consent forms;

k. physicians' orders;

l. records of all medicines administered, including medication types, dosages, frequency of administration, the individual who administered each dose and response to medication given on an as needed basis;

m. discharge summary;

n. other pertinent information related to client as appropriate; and

4. legible progress notes that are documented in accordance with professional standards of practice and:

a. document implementation of the treatment plan and results;

b. document the client's level of participation; and

c. are completed upon delivery of services by the direct care staff to document progress toward stated treatment plan goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5349. Client Funds and Possessions

A. The CRC shall:

1. maintain and safeguard all possessions, including money, brought to the center by clients;

2. maintain an inventory of each client's possessions from the date of admission; and

3. return all possessions to the client upon the client's discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5351. Quality Improvement Plan

A. A CRC shall have a quality improvement (QI) plan that:

1. assures that the overall function of the center is in compliance with federal, state, and local laws;

2. is meeting the needs of the citizens of the area;

3. is attaining the goals and objectives established in the center's mission statement;

4. maintains systems to effectively identify issues that require quality monitoring, remediation and improvement activities;

5. improves individual outcomes and individual satisfaction;

6. includes plans of action to correct identified issues that:

a. monitor the effects of implemented changes; and

b. result in revisions to the action plan.

7. is updated on an ongoing basis to reflect changes, corrections and other modifications.

B. The QI plan shall include:

1. a sample review of client case records on a quarterly basis to ensure that:

a. individual treatment plans are up to date;

b. records are accurate, complete and current; and

c. the treatment plans have been developed and implemented as ordered.

2. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of the clients that includes, but is not limited to:

a. review and resolution of grievances;

b. incidents resulting in harm to client or elopement;

c. allegations of abuse, neglect and exploitation; and

d. seclusion and restraint;

3. a process to correct problems identified and track improvements; and

4. a process of improvement to identify or trigger further opportunities for improvement.

C. The QI plan shall establish and implement an internal evaluation procedure to:

1. collect necessary data to formulate a plan; and

2. hold quarterly staff committee meetings comprised of at least three staff members, one of whom is the CRC manager, nurse manager or clinical director, who evaluate the QI process and activities on an ongoing basis.

D. The CRC shall maintain documentation of the most recent 12 months of the QI activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter E. Personnel

§5357. General Requirements

A. The CRC shall maintain an organized professional staff who is accountable to the governing body for the overall responsibility of:

1. the quality of all clinical care provided to clients;

2. the ethical conduct and professional practices of its members;

3. compliance with policies and procedures approved by the governing body; and

4. the documented staff organization that pertains to the center's setting and location.

B. The direct care staff of a CRC shall:

1. have the appropriate qualifications to provide the services required by its clients' treatment plans; and

2. not practice beyond the scope of his/her license, certification or training.

C. The CRC shall ensure that:

1. qualified direct care staff members are present with the clients as necessary to ensure the health, safety and well-being of clients;

2. staff coverage is maintained in consideration of:

a. acuity of the clients being serviced;

b. the time of day;

c. the size, location, physical environment and nature of the center;

d. the ages and needs of the clients; and

e. ensuring the continual safety, protection, direct care and supervision of clients;

3. all direct care staff have current certification in cardiopulmonary resuscitation; and

4. applicable staffing requirements in this Chapter are maintained.

D. Criminal Background Checks

1. For any CRC that is treating minors, the center shall obtain a criminal background check on all staff. The background check must be conducted within 90 days prior to hire or employment in the manner required by R.S. 15:587.1.

2. For any CRC that is treating adults, the center shall obtain a statewide criminal background check on all unlicensed direct care staff by an agency authorized by the Office of State Police to conduct criminal background checks. The background check must be conducted within 90 days prior to hire or employment.

3. A CRC that hires a contractor to perform work which does not involve any contact with clients is not required to conduct a criminal background check on the contractor if accompanied at all times by a staff person when clients are present in the center.

E. The CRC shall review the Louisiana state nurse aide registry and the Louisiana direct service worker registry to ensure that each unlicensed direct care staff member prior to hire or employment and at least annually thereafter, does not have a negative finding on either registry.

F. Prohibitions

1. The center providing services to minors is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a person who supervises minors or provides direct care to minors who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. violence, abuse or neglect against a person;

ii. possession, sale, or distribution of illegal drugs;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person; or

v. a crime of violence;

b. has a finding placed on the Louisiana state nurse aide registry or the Louisiana direct service worker registry.

2. The center providing services to adults is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. abuse or neglect of a person;

ii. possession, sale, or distribution of a controlled dangerous substance:

(a). within the last five years; or

(b). when the employee/contractor is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person;

(a). within the last five years; or

(b). when the employee is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice; or

v. a crime of violence;

b. has a finding placed on the Louisiana state nurse aide registry or the Louisiana direct service worker registry.

G. Orientation and In-Service Training

1. All staff shall receive orientation prior to providing services and/or working in the center.

2. All direct care staff shall receive orientation, at least 40 hours of which is in crisis services and intervention training.

3. All direct care staff and other appropriate personnel shall receive in-service training at least once a year, at least twelve hours of which is in crisis services and intervention training.

4. All staff shall receive in-service training according to center policy at least once a year and as deemed necessary depending on the needs of the clients.

5. The content of the orientation and in-service training shall include the following:

a. confidentiality;

b. grievance process;

c. fire and disaster plans;

d. emergency medical procedures;

e. organizational structure and reporting relationships;

f. program philosophy;

g. personnel policies and procedures;

h. detecting and mandatory reporting of client abuse, neglect or misappropriation;

i. an overview of mental health and substance abuse, including an overview of behavioral health settings and levels of care;

j. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

k. side effects and adverse reactions commonly caused by psychotropic medications;

l. basic skills required to meet the health needs and challenges of the client;

m. components of a crisis cycle;

n. recognizing the signs of anxiety and escalating behavior;

o. crisis intervention and the use of non-physical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;

p. therapeutic communication;

q. client's rights;

r. duties and responsibilities of each employee;

s. standards of conduct required by the center including professional boundaries;

t. information on the disease process and expected behaviors of clients;

u. levels of observation;

v. maintaining a clean, healthy and safe environment and a safe and therapeutic milieu;

w. infectious diseases and universal precautions;

x. overview of the Louisiana licensing standards for crisis receiving centers;

y. basic emergency care for accidents and emergencies until emergency medical personnel can arrive at center; and

z. regulations, standards and policies related to seclusion and restraint, including the safe application of physical and mechanical restraints and physical assessment of the restrained client.

6. The in-services shall serve as a refresher for subjects covered in orientation.

7. The orientation and in-service training shall:

a. be provided only by staff who are qualified by education, training, and experience;

b. include training exercises in which direct care staff members successfully demonstrate in practice the techniques they have learned for managing the delivery of patient care services; and

c. require the direct care staff member to demonstrate competency before providing services to clients.

H. Staff Evaluation

1. The center shall complete an annual performance evaluation of all employees.

2. The center's performance evaluation procedures for employees who provide direct care to clients shall address the quality and nature of the employee's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5359. Personnel Qualifications and Responsibilities

A. A CRC shall have the following minimum staff:

1. a CRC manager who:

a. has a minimum of a master's degree in a human services field or is a licensed registered nurse;

b. has at least one year of qualifying experience in the field of behavioral health;

c. is a full time employee; and

d. has the following assigned responsibilities:

i. supervise and manage the day to day operation of the CRC;

ii. review reports of all accidents/incidents occurring on the premises and identify hazards to the clinical director;

iii. participate in the development of new programs and modifications;

iv. perform programmatic duties and/or make clinical decisions only within the scope of his/her licensure; and

v. shall not have other job responsibilities that impede the ability to maintain the administration and operation of the CRC;

2. a clinical director who is:

a. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

b. a psychiatric and mental health nurse practitioner who has an unrestricted APRN license with prescriptive authority, and who is in collaborative practice with a Louisiana licensed physician for consultation in accordance with the Louisiana State Board of Nursing (LSBN) requirements;

c. responsible for developing and implementing policies and procedures and oversees clinical services and treatment;

d. on duty as needed and on call and available at all times;

3. a nurse manager who:

a. holds a current unrestricted license as a registered nurse (RN) in the state of Louisiana;

b. shall be a full time employee;

c. has been a RN for a minimum of five years;

d. has three years of qualifying experience providing direct care to patients with behavioral health diagnoses and at least one year qualifying experience providing direct care to medical/surgical inpatients;

e. has the following responsibilities:

i. develop and ensure implementation of nursing policies and procedures;

ii. provide oversight of nursing staff and the services they provide;

iii. ensure that any other job responsibilities will not impede the ability to provide oversight of nursing services;

4. authorized licensed prescriber who:

a. shall be either:

i. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

ii. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;

b. is on call at all times;

c. is responsible for managing the psychiatric and medical care of the clients;

5. licensed mental health professionals (LMHPs):

a. the center shall maintain a sufficient number of LMHPs to meet the needs of its clients;

b. there shall be at least one LMHP on duty during hours of operation;

c. the LMHP shall have one year of qualifying experience in direct care to clients with behavioral health diagnoses and shall have the following responsibilities:

i. provide direct care to clients and may serve as primary counselor to specified caseload;

ii. serve as a resource person for other professionals and unlicensed personnel in their specific area of expertise;

iii. attend and participate in individual care conferences, treatment planning activities, and discharge planning; and

iv. function as the client's advocate in all treatment decisions;

6. nurses:

a. the center shall maintain licensed nursing staff to meet the needs of its clients;

b. all nurses shall have:

i. a current nursing license from the state of Louisiana;

ii. at least one year qualifying experience in providing direct care to clients with a behavioral health diagnosis; and

iii. at least one year qualifying experience providing direct care to medical/surgical inpatients;

c. the nursing staff has the following responsibilities:

i. provide nursing services in accordance with accepted standards of practice, the CRC policies and the individual treatment plans of the clients;

ii. supervise non-licensed clinical personnel;

iii. each CRC shall have at least one RN on duty at the CRC during hours of operation; and

iv. as part of orientation, all nurses shall receive 24 hours of education focusing on psychotropic medications, their side effects and possible adverse reactions. All nurses shall receive training in psychopharmacology for at least four hours per year.

B. Optional Staff

1. The CRC shall maintain non-licensed clinical staff as needed who shall:

a. be at least 18 years of age;

b. have a high school diploma or GED;

c. provide services in accordance with CRC policies, documented education, training and experience, and the individual treatment plans of the clients; and

d. be supervised by the nursing staff.

2. Volunteers

a. The CRC that utilizes volunteers shall ensure that each volunteer:

i. meets the requirements of non-licensed clinical staff;

ii. is screened and supervised to protect clients and staff;

iii. is oriented to facility, job duties, and other pertinent information;

iv. is trained to meet requirements of duties assigned;

v. is given a written job description or written agreement;

vi. is identified as a volunteer;

vii. is trained in privacy measures; and

viii. is required to sign a written confidentiality agreement.

b. The facility shall designate a volunteer coordinator who:

i. has the experience and training to supervise the volunteers and their activities; and

ii. is responsible for selecting, evaluating and supervising the volunteers and their activities.

3. If a CRC utilizes student interns, it shall ensure that each student intern:

a. has current registration with the appropriate Louisiana board when required or educational institution, and is in good standing at all times;

b. provides direct client care utilizing the standards developed by the professional board;

c. provides care only under the direct supervision of an individual authorized in accordance with acceptable standards of practice; and

d. provides only those services for which the student has been properly trained and deemed competent to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5361. Personnel Records

A. A CRC shall maintain a personnel file for each employee and direct care staff member in the center. Each record shall contain:

1. the application for employment and/or resume, including contact information and employment history for the preceding five years, if applicable;

2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;

3. any required medical examinations or health screens;

4. evidence of current applicable professional credentials/certifications according to state law or regulations;

5. annual performance evaluations to include evidence of competency in performing assigned tasks;

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment;

7. the staff member's starting and termination dates;

8. proof of orientation, training and in-services;

9. results of criminal background checks, if required;

10. job descriptions and performance expectations;

11. a signed attestation annually by each member of the direct care staff indicating that he/she has not been convicted of or pled guilty or nolo contendere to a crime, other than traffic violations; and

12. written confidentiality agreement signed by the personnel every twelve months.

B. A CRC shall retain personnel files for at least three years following termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter F. Admission, Transfer and Discharge

§5367. Admission Requirements

A. A CRC shall not refuse admission to any individual on the grounds of race, national origin, ethnicity or disability.

B. A CRC shall admit only those individuals whose needs, pursuant to the screening, can be fully met by the center.

C. A CRC shall expect to receive individuals who present voluntarily to the unit and/or individuals who are brought to the unit under an OPC, CEC, or PEC.

D. The CRC shall develop and implement policies and procedures for diverting individuals when the CRC is at capacity, that shall include:

1. notifying emergency medical services (EMS), police and the OBH or its designee in the service area;

2. conducting a screening on each individual that presents to the center; and

3. safely transferring the presenting individual to an appropriate provider.

E. Pre-Admission Requirements

1. Prior to admission, the center shall attempt to obtain documentation from the referring emergency room, agency, facility or other source, if available, that reflects the client's condition.

2. The CRC shall conduct a screening on each individual that presents for treatment that:

a. is performed by a RN who may be assisted by other personnel;

b. is conducted within 15 minutes of entering the center;

c. determines eligibility and appropriateness for admission;

d. assesses whether the client is an imminent danger to self or others; and

e. includes the following:

i. taking vital signs;

ii. breath analysis and urine drug screen;

iii. brief medical history including assessment of risk for imminent withdrawal; and

iv. clinical assessment of current condition to determine primary medical problem(s) and appropriateness of admission to CRC or transfer to other medical provider.

F. Admission Requirements

1. The CRC shall establish the CRC's admission requirements that include:

a. availability of appropriate physical accommodations;

b. legal authority or voluntary admission; and

c. written documentation that client and/or family if applicable, consents to treatment.

2. The CRC shall develop, implement and comply with admission criteria that, at a minimum, include the following inclusionary and exclusionary requirements.

a. Inclusionary: the client is experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and exceeds the abilities and resources of those involved to effectively resolve it.

b. Exclusionary: the client is experiencing an exacerbation of a chronic condition that does not meet the inclusionary criteria listed in §5367.F.2.a.

3. If the client qualifies for admission into the CRC, the center shall ensure that a behavioral health assessment is conducted:

a. by a LMHP;

b. within four hours of being received in the unit unless extenuating or emergency circumstances preclude the delivery of this service within this time frame; and

c. includes the following:

i. a history of previous emotional, behavioral and substance use problems and treatment;

ii. a social assessment to include a determination of the need for participation of family members or significant others in the individual's treatment; the social, peer-group, and environmental setting from which the person comes; family circumstances; current living situation; employment history; social, ethnic, cultural factors; and childhood history; current or pending legal issues including charges, pending trial, etc.;

iii. an assessment of the individual's ability and willingness to cooperate with treatment;

iv. an assessment for any possible abuse or neglect; and

v. review of any laboratory results, results of breath analysis and urine drug screens on patients and the need for further medical testing.

4. The CRC shall ensure that a nursing assessment is conducted that is:

a. begun at time of admission and completed within 24 hours; and

b. conducted by a RN with the assistance of other personnel.

5. The center shall ensure that a physical assessment is conducted by an authorized licensed prescriber within 12 hours of admission that includes:

a. a complete medical history;

b. direct physical examination; and

c. documentation of medical problems.

6. The authorized license prescriber, LMHP and/or RN shall conduct a review of the medical and psychiatric records of current and past diagnoses, laboratory results, treatments, medications and dose response, side-effects and compliance with:

a. the review of data reported to clinical director;

b. synthesis of data received is incorporated into treatment plan by clinical director.

G. Client/Family Orientation. Upon admission or as soon as possible, each facility shall ensure that a confidential and efficient orientation is provided to the client and the client's designated representative, if applicable, concerning:

1. visitation;

2. physical layout of the center;

3. safety;

4. center rules; and

5. all other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5369. Discharge, Transfer and Referral Requirements

A. The CRC shall develop, implement and comply with policies and procedures that address when and how clients will be discharged and referred or transferred to other providers in accordance with applicable state and federal laws and regulations.

B. Discharge planning shall begin upon admission.

C. The CRC shall ensure that a client is discharged:

1. when the client's treatment goals are achieved, as documented in the client's treatment plan;

2. when the client's issues or treatment needs are not consistent with the services the center is authorized or able to provide; or

3. according to the center's established written discharge criteria.

D. Discharge Plan. Each CRC client shall have a written discharge plan to provide continuity of services that includes:

1. the client's transfer or referral to outside resources, continuing care appointments, and crisis intervention assistance;

2. documented attempts to involve the client and the family or an alternate support system in the discharge planning process;

3. the client's goals or activities to sustain recovery;

4. signature of the client or, if applicable, the client's parent or guardian, with a copy provided to the individual who signed the plan;

5. name, dosage and frequency of client's medications ordered at the time of discharge;

6. prescriptions for medications ordered at time of discharge; and

7. the disposition of the client's possessions, funds and/or medications, if applicable.

E. The discharge summary shall be completed within 30 days and include:

1. the client's presenting needs and issues identified at the time of admission;

2. the services provided to the client;

3. the center's assessment of the client's progress towards goals;

4. the circumstances of discharge; and

5. the continuity of care recommended following discharge, supporting documentation and referral information.

F. Transfer Process. The CRC responsible for the discharge and transfer of the client shall:

1. request and receive approval from the receiving facility prior to transfer;

2. notify the receiving facility prior to the arrival of the client of any significant medical/psychiatric conditions/complications or any other pertinent information that will be needed to care for the client prior to arrival; and

3. transfer all requested client information and documents upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter G. Program Operations

§5375. Treatment Services

A. A CRC shall:

1. operate 24 hours per day seven days a week;

2. operate up to 24 licensed beds;

3. provide services to either adults or minors but not both;

4. provide services that include, but are not limited to:

a. emergency screening;

b. assessment;

c. crisis intervention and stabilization;

d. 24 hour observation;

e. medication administration; and

f. referral to the most appropriate and least restrictive setting available consistent with the client's needs.

B. A CRC shall admit clients for an estimated length of stay of 3-7 days. If a greater length of stay is needed, the CRC shall maintain documentation of clinical justification for the extended stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5377. Laboratory Services

A. The CRC shall have laboratory services available to meet the needs of its clients, including the ability to:

1. obtain STAT laboratory results as needed at all times;

2. conduct a dipstick urine drug screen; and

3. conduct a breath analysis for immediate determination of blood alcohol level.

B. The CRC shall maintain a CLIA certificate for the laboratory services provided on-site.

C. The CRC shall ensure that all contracted laboratory services are provided by a CLIA clinical laboratory improvement amendment (CLIA) certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5379. Pharmaceutical Services and Medication Administration

A. The CRC may provide pharmaceutical services on-site at the center or off-site pursuant to a written agreement with a pharmaceutical provider.

B. All compounding, packaging, and dispensing of medications shall be accomplished in accordance with Louisiana law and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

C. The CRC shall ensure that a mechanism exists to:

1. provide pharmaceutical services 24 hours per day; and

2. obtain STAT medications, as needed, within an acceptable time frame, at all times.

D. CRCs that utilize off-site pharmaceutical providers pursuant to a written agreement shall have:

1. a physician who assumes the responsibility of procurement and possession of medications; and

2. an area for the secure storage of medication and medication preparation in accordance with Louisiana Board of Pharmacy rules and regulations.

E. A CRC shall maintain:

1. a site-specific Louisiana controlled substance license in accordance with the Louisiana Uniform Controlled Dangerous Substance Act; and

2. a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with title 21 of the *United States Code*.

F. The CRC shall develop, implement and comply with written policies and procedures in accordance with applicable federal, state and local laws and ordinances that govern:

1. the safe administration and handling of all prescription and non-prescription medications;

2. the storage, recording and control of all medications;

3. the disposal of all discontinued and/or expired medications and containers with worn, illegible or missing labels;

4. the use of prescription medications including:

a. when medication is administered, medical monitoring occurs to identify specific target symptoms;

b. a procedure to inform clients, staff, and where appropriate, client's parent(s), legal guardian(s) or designated representatives, of each medication's anticipated results, the potential benefits and side-effects as well as the potential adverse reaction that could result from not taking the medication as prescribed;

c. involving clients and, where appropriate, their parent(s) or legal guardian(s), and designated representatives in decisions concerning medication; and

d. staff training to ensure the recognition of the potential side effects of the medication;

5. the list of abbreviations and symbols approved for use in the facility;

6. recording of medication errors and adverse drug reactions and reporting them to the client's physician or authorized prescriber, and the nurse manager;

7. the reporting of and steps to be taken to resolve discrepancies in inventory, misuse and abuse of controlled substances in accordance with federal and state law;

8. provision for emergency pharmaceutical services;

9. a unit dose system; and

10. procuring and the acceptable timeframes for procuring STAT medications when the medication needed is not available on-site.

C. The CRC shall ensure that:

1. medications are administered by licensed health care personnel whose scope of practice includes administration of medications;

2. any medication is administered according to the order of an authorized licensed prescriber;

3. it maintains a list of authorized licensed prescribers that is accessible to staff at all times;

4. all medications are kept in a locked illuminated clean cabinet, closet or room at temperature controls according to the manufacturer's recommendations, accessible only to individuals authorized to administer medications;

5. medications are administered only upon receipt of written orders, electromechanical facsimile, or verbal orders from an authorized licensed prescriber;

6. all verbal orders are signed by the licensed prescriber within 72 hours;

7. medications that require refrigeration are stored in a refrigerator or refrigeration unit separate from the refrigerators or refrigeration units that store food, beverages, or laboratory specimens;

8. all prescription medication containers are labeled to identify:

a. the client's full name;

b. the name of the medication;

c. dosage;

d. quantity and date dispensed;

e. directions for taking the medication;

f. required accessory and cautionary statements;

g. prescriber's name; and

h. the expiration date;

9. medication errors, adverse drug reactions, and interactions with other medications, food or beverages taken by the client are immediately reported to the client's physician or authorized licensed prescriber, supervising pharmacist and nurse manager with an entry in the client's record;

10. all controlled substances shall be kept in a locked cabinet or compartment separate from other medications;

11. current and accurate records are maintained on the receipt and disposition of controlled substances;

12. controlled substances are reconciled:

a. at least twice a day by staff authorized to administer controlled substances; or

b. by an automated system that provides reconciliation;

13. discrepancies in inventory of controlled substances are reported to the nurse manager and the supervising pharmacist in accordance with federal and state laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5381. Transportation

A. The CRC shall establish, implement and comply with policies and procedures to:

1. secure emergency transportation in the event of a client's medical emergency; and

2. provide non-emergent medical transportation to the clients as needed.

B. The facility shall have a written agreement with a transportation service in order to provide non-emergent transport services needed by its clients that shall require all vehicles used to transport CRC clients are:

1. maintained in a safe condition;

2. properly licensed and inspected in accordance with state law;

3. operated at a temperature that does not compromise the health, safety and needs of the client;

4. operated in conformity with all applicable motor vehicle laws;

5. current liability coverage for all vehicles used to transport clients;

6. all drivers of vehicles that transport CRC clients are properly licensed to operate the class of vehicle in accordance with state law; and

7. the ability to transport non-ambulatory clients in appropriate vehicles if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5383. Food and Diet

A. The CRC shall ensure that:

1. all dietary services are provided under the direction of a Louisiana licensed and registered dietician either directly or by written agreement;

2. menus are approved by the registered dietician;

3. meals are of sufficient quantity and quality to meet the nutritional needs of clients, including religious and dietary restrictions;

4. meals are in accordance with Federal Drug Administration (FDA) dietary guidelines and the orders of the authorized licensed prescriber;

5. at least three meals plus an evening snack are provided daily with no more than 14 hours between any two meals;

6. meals are served in a manner that maintains the safety and security of the client and are free of identified contraband;

7. all food is stored, prepared, distributed, and served under safe and sanitary conditions in accordance with the Louisiana *Sanitary Code*;

8. all equipment and utensils used in the preparation and serving of food are properly cleaned, sanitized and stored in accordance with the Louisiana *Sanitary Code*; and

9. if meals are prepared on-site, they are prepared in an OPH approved kitchen.

B. The CRC may provide meal service and preparation pursuant to a written agreement with an outside food management company. If provided pursuant to a written agreement, the CRC shall:

1. maintain responsibility for ensuring compliance with this Chapter;

2. provide written notice to HSS and OPH within 10 calendar days of the effective date of the contract;

3. ensure that the outside food management company possesses a valid OPH retail food permit and meets all requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the special requirements for highly susceptible populations as promulgated in the Louisiana Sanitary Code provisions governing food display and service for retail food establishments (specifically LAC 51:XXIII.1911 as amended May 2007); and

4. ensure that the food management company employs or contracts with a licensed and registered dietician who serves the center as needed to ensure that the nutritional needs of the clients are met in accordance with the authorized licensed prescriber's orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter H. Client Rights

§5389. General Provisions

A. The CRC shall develop, implement and comply with policies and procedures that:

1. protect its clients' rights;

2. respond to questions and grievances pertaining to these rights;

3. ensure compliance with clients' rights enumerated in R.S. 28:171; and

4. ensure compliance with minors' rights enumerated in the Louisiana *Children's Code*.

B. A CRC's client and, if applicable, the client's parent(s) or legal guardian or chosen designated representative, have the following rights:

1. to be informed of the client's rights and responsibilities at the time of or shortly after admission;

2. to have a family member, chosen representative and/or his or her own physician notified of admission at the client's request to the CRC;

3. to receive treatment and medical services without discrimination based on race, age, religion, national origin, gender, sexual orientation, disability, marital status, diagnosis, ability to pay or source of payment;

4. to be free from abuse, neglect, exploitation and harassment;

5. to receive care in a safe setting;

6. to receive the services of a translator or interpreter, if applicable, to facilitate communication between the client and the staff;

7. to be informed of the client's own health status and to participate in the development, implementation and updating of the client's treatment plan;

8. to make informed decisions regarding the client's care in accordance with federal and state laws and regulations;

9. to consult freely and privately with the client's legal counsel or to contact an attorney at any reasonable time;

10. to be informed, in writing, of the policies and procedures for initiation, review and resolution of grievances or client complaints;

11. to submit complaints or grievances without fear of reprisal;

12. to have the client's information and medical records, including all computerized medical information, kept confidential in accordance with federal and state statutes and rules/regulations;

13. to be provided indoor and/or outdoor recreational and leisure opportunities;

14. to be given a copy of the center's rules and regulations upon admission or shortly thereafter;

15. to receive treatment in the least restrictive environment that meets the client's needs;

16. to be subject to the use of restraint and/or seclusion only in accordance with federal and state law, rules and regulations;

17. to be informed of all estimated charges and any limitations on the length of services at the time of admission or shortly thereafter;

18. to contact DHH at any reasonable time;

19. to obtain a copy of these rights as well as the address and phone number of DHH and the Mental Health Advocacy Service at any time; and

20. to be provided with personal hygiene products, including but not limited to, shampoo, deodorant, toothbrush, toothpaste, and soap, if needed.

C. A copy of the clients' right shall be posted in the facility and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5391. Grievances

A. The facility shall develop, implement and comply with a written grievance procedure for clients designed to allow clients to submit a grievance without fear of retaliation. The procedure shall include, but not be limited to:

1. process for filing a grievance;

2. a time line for responding to the grievance;

3. a method for responding to a grievance; and

4. the staff responsibilities for addressing and resolving grievances.

B. The facility shall ensure that:

1. the client and, if applicable, the client's parent(s) or legal guardian(s), is aware of and understands the grievance procedure; and

2. all grievances are addressed and resolved to the best of the center's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter I. Physical Environment

§5397. Interior Space

A. The CRC shall:

1. have a physical environment that protects the health, safety and security of the clients;

2. have routine maintenance and cleaning programs in all areas of the center;

3. be well-lit, clean, and ventilated;

4. conduct a risk assessment of each client and the physical environment of the facility in order to ensure the safety and well-being of all clients admitted to the facility;

5. maintain its physical environment, including, but not limited to, all equipment, fixtures, plumbing, electrical, and furnishings, in good order and safe condition in accordance with manufacturer's recommendations;

6. maintain heating, ventilation and cooling systems in good order and safe condition to ensure a comfortable environment; and

7. ensure that electric receptacles in client care areas are tamper-resistant or equipped with ground fault circuit interrupters.

B. Common Area. The CRC shall have designated space:

1. to be used for group meetings, dining, visitation, leisure and recreational activities;

2. that is at least 25 square feet per client and no less than 150 square feet exclusive of sleeping areas, bathrooms, areas restricted to staff and office areas; and

3. that contains tables for eating meals.

C. Bathrooms

1. Each bathroom to be used by clients shall contain:

a. a lavatory with:

i. paper towels or an automatic dryer;

ii. a soap dispenser with soap for individual use; and

iii. a wash basin with hot and cold running water;

b. tubs and/or showers that:

i. have hot and cold water;

ii. have slip proof surfaces; and

iii. allow for individual privacy

c. toilets:

i. an adequate supply of toilet paper;

ii. with seats; and

iii. that allow for individual privacy;

d. a sink, tub or shower and toilet for the number of clients and in accordance with the Louisiana state *Sanitary Code*;

e. shatterproof mirrors secured to the walls at convenient heights;

f. plumbing, piping, ductwork, and that are recessed or enclosed in order to be inaccessible to clients; and

g. other furnishings necessary to meet the clients' basic hygienic needs.

2. A CRC shall have at least one separate toilet and lavatory facility for the staff.

D. Sleeping Areas and Bedroom(s)

1. A CRC that utilizes a sleeping area for multiple clients shall:

a. ensure that its sleeping area has at least 60 square feet per bed of clear floor area and does not contain or utilize bunk beds; and

b. shall maintain at least one separate bedroom.

2. Bedrooms. A CRC that utilizes individual bedrooms shall ensure that each bedroom:

a. accommodates no more than one client; and

b. has at least 80 square feet of clear floor area.

3. The CRC shall ensure that each client:

a. has sufficient separate storage space for clothing, toilet articles and other personal belongings of clients;

b. has sheets, pillow, bedspread, towels, washcloths and blankets that are:

i. intact and in good repair;

ii. systematically removed from use when no longer usable;

iii. clean;

iv. provided as needed or when requested unless the request is unreasonable;

c. is given a bed for individual use that:

i. is no less than 30 inches wide;

ii. is of solid construction;

iii. has a clean, comfortable, impermeable, nontoxic and fire retardant mattress; and

iv. is appropriate to the size and age of the client.

4. - 4.c.iv. Repealed.

E. Administrative and Staff Areas

1. The CRC shall maintain a space that is distinct from the client common areas that serves as an office for administrative functions.

2. The CRC shall have a designated space for nurses and other staff to complete tasks, be accessible to clients and to observe and monitor client activity within the unit.

F. Counseling and Treatment Area

1. The CRC shall have a designated space to allow for private physical examination that is exclusive of sleeping area and common space.

2. The CRC shall have a designated space to allow for private and small group discussions and counseling sessions between individual clients and staff that is exclusive of sleeping areas and common space.

3. The CRC may utilize the same space for the counseling area and examination area.

G. Seclusion Room

1. The CRC shall have at least one seclusion room that:

a. is for no more than one client; and

b. allows for continual visual observation and monitoring of the client either:

i. directly; or

ii. by a combination of video and audio;

c. has a monolithic ceiling;

d. is a minimum of 80 square feet; and

e. contains a stationary restraint bed that is secure to the floor;

f. flat walls that are free of any protrusions with angles;

g. does not contain electrical receptacles.

H. Kitchen

1. If a CRC prepares meals on-site, the CRC shall have a full service kitchen that:

a. includes a cooktop, oven, refrigerator, freezer, hand washing station, storage and space for meal preparation;

b. complies with OPH regulations;

c. has the equipment necessary for the preparation, serving, storage and clean-up of all meals regularly served to all of the clients and staff;

d. contains trash containers covered and made of metal or United Laboratories-approved plastic; and

e. maintains the sanitation of dishes.

2. A CRC that does not provide a full service kitchen accessible to staff 24 hours per day shall have a nourishment station or a kitchenette, restricted to staff only, in which staff may prepare nourishments for clients, that includes:

a. a kitchen sink;

b. a work counter;

c. a refrigerator;

d. storage cabinets;

e. equipment for preparing hot and cold nourishments between scheduled meals; and

f. space for trays and dishes used for non-scheduled meal service.

3. A CRC may utilize ice making equipment if the ice maker:

a. is self-dispensing; or

b. is in an area restricted to staff only.

I. Laundry

1. The CRC shall have an automatic washer and dryer for use by staff when laundering clients' clothing.

2. The CRC shall have:

a. provisions to clean and launder soiled linen, other than client clothing, either on-site or off-site by written agreement;

b. a separate area for holding soiled linen until it is laundered; and

c. a clean linen storage area.

J. Storage

1. The CRC shall have separate and secure storage areas that are inaccessible to clients for the following:

a. client possessions that may not be accessed during their stay;

b. hazardous, flammable and/or combustible materials; and

2. records and other confidential information.

K. Furnishings

1. The CRC shall ensure that its furnishings are:

a. designed to suit the size, age and functional status of the clients;

b. in good repair;

c. clean;

d. promptly repaired or replaced if defective, run-down or broken.

L. Hardware, Fixtures and other Protrusions

1. If grab bars are used, the CRC shall ensure that the space between the bar and the wall shall be filled to prevent a cord from being tied around it.

2. All hardware as well as sprinkler heads, lighting fixtures and other protrusions shall be:

a. recessed or of a design to prohibit client access; and

b. tamper-resistant.

3. Towel bars, shower curtain rods, clothing rods and hooks are prohibited.

M. Ceilings

1. The CRC shall ensure that the ceiling is:

a. no less than 7.5 feet high and secured from access; or

b. at least 9 feet in height; and

c. all overhead plumbing, piping, duct work or other potentially hazardous elements shall be concealed above the ceiling.

N. Doors and Windows

1. All windows shall be fabricated with laminated safety glass or protected by polycarbonate, laminate or safety screens.

2. Door hinges shall be designed to minimize points for hanging.

3. Except for specifically designed anti-ligature hardware, door handles shall point downward in the latched or unlatched position.

4. All hardware shall have tamper-resistant fasteners.

5. The center shall ensure that outside doors, windows and other features of the structure necessary for safety and comfort of individuals:

a. are secured for safety;

b. prohibit clients from gaining unauthorized egress;

c. prohibit an outside from gaining unauthorized ingress;

d. if in disrepair, not accessible to clients until repaired; and

e. repaired as soon as possible.

6. The facility shall ensure that all closets, bedrooms and bathrooms for clients that are equipped with doors do not have locks and can be readily opened from both sides.

O. Smoking

1. The CRC shall prohibit smoking in the interior of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5399. Exterior Space Requirements

A. The CRC shall maintain all exterior areas to prevent elopement, injury, suicide and the introduction of contraband, and shall maintain a perimeter security system designed to monitor and control visitor access and client egress.

B. The facility shall maintain all exterior areas and structures of the facility in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall ensure the following:

1. garbage stored outside is secured in non-combustible, covered containers and are removed on a regular basis;

2. trash collection receptacles and incinerators are separate from any area accessible to clients and located as to avoid being a nuisance;

3. unsafe areas, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads are fenced or have natural barriers to protect clients;

4. fences that are in place are in good repair;

5. exterior areas are well lit; and

6. the facility has appropriate signage that:

a. is visible to the public;

b. indicates the facility's legal or trade name;

c. clearly states that the CRC provides behavioral health services only; and

d. indicates the center is not hospital or emergency room.

D. A CRC with an outdoor area to be utilized by its clients shall ensure that the area is safe and secure from access and egress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 54. Crisis Receiving Centers

Subchapter J. Safety and Emergency Preparedness

§5401. General Safety Provisions

A. The CRC shall provide additional supervision when necessary to provide for the safety of all clients.

B. The CRC shall:

1. prohibit weapons of any kind on-site;

2. prohibit glass, hand sanitizer, plastic bags in client-care areas;

3. ensure that all poisonous, toxic and flammable materials are:

a. maintained in appropriate containers and labeled as to the contents;

b. securely stored in a locked cabinet or closet;

c. are used in such a manner as to ensure the safety of clients, staff and visitors; and

d. maintained only as necessary;

4. ensure that all equipment, furnishing and any other items that are in a state of disrepair are removed and inaccessible to clients until replaced or repaired; and

5. ensure that when potentially harmful materials such as cleaning solvents and/or detergents are used, training is provided to the staff and they are used by staff members only.

C. The CRC shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

D. The CRC shall simulate fire drills and other emergency drills at least once a quarter while maintaining client safety and security during the drills.

E. Required Inspections. The CRC shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations.

F. The CRC shall have an on-going safety program to include:

1. continuous inspection of the facility for possible hazards;

2. continuous monitoring of safety equipment and maintenance or repair when needed;

3. investigation and documentation of all accidents or emergencies; and

4. fire control, evacuation planning and other emergency drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5403. Infection Control

A. The CRC shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases.

B. The CRC shall have an active Infection Control Program that requires:

1. reporting of infectious disease in accordance with OPH guidelines;

2. monitoring of:

a. the spread of infectious disease;

b. hand washing;

c. staff and client education; and

d. incidents of specific infections in accordance with OPH guidelines;

3. corrective actions;

4. a designated infection control coordinator who:

a. has education and/or experience in infection control;

b. develops and implements policies and procedures governing the infection control program;

c. takes universal precautions; and

d. strictly adheres to all sanitation requirements;

5. the CRC shall maintain a clean and sanitary environment and shall ensure that:

a. supplies and equipment are available to staff;

b. there is consistent and constant monitoring and cleaning of all areas of the facility;

c. the methods used for cleaning, sanitizing, handling and storing of all supplies and equipment prevent the transmission of infection;

d. directions are posted for sanitizing both kitchen and bathroom and laundry areas;

e. showers and bathtubs are to be sanitized by staff between client usage;

f. clothing belonging to clients must be washed and dried separately from the clothing belonging to other clients; and

g. laundry facilities are used by staff only;

h. food and waste are stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests.

C. The CRC may enter into a written contract for housekeeping services necessary to maintain a clean and neat environment.

D. Each CRC shall have an effective pest control plan.

E. After discharge of a client, the CRC shall:

1. clean the bed, mattress, cover, bedside furniture and equipment;

2. ensure that mattresses, blankets and pillows assigned to clients are intact and in a sanitary condition; and

3. ensure that the mattress, blankets and pillows used for a client are properly sanitized before assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5405. Emergency Preparedness

A. The CRC shall have a written emergency preparedness plan to:

1. maintain continuity of the center's operations in preparation for, during and after an emergency or disaster; and

2. manage the consequences of all disasters or emergencies that disrupt the center's ability to render care and treatment, or threaten the lives or safety of the clients.

B. The CRC shall:

1. post exit diagrams describing how to clear the building safely and in a timely manner;

2. have a clearly labeled and legible master floor plan(s) that indicates:

a. the areas in the facility that are to be used by clients as shelter or safe zones during emergencies;

b. the location of emergency power outlets and whether they are powered;

c. the locations of posted, accessible, emergency information; and

d. what will be powered by emergency generator(s), if applicable;

3. train its employees in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

C. The CRC's emergency preparedness plan shall include the following information, at a minimum:

1. if the center evacuates, the plan shall include:

a. provisions for the evacuation of each client and delivery of essential services to each client;

b. the center's method of notifying the client's family or caregiver, if applicable, including:

i. the date and approximate time that the facility or client is evacuating;

ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and

iii. a telephone number that the family or responsible representative may call for information regarding the client's evacuation;

c. provisions for ensuring that supplies, medications, clothing and a copy of the treatment plan are sent with the client, if the client is evacuated;

d. the procedure or methods that will be used to ensure that identification accompanies the client including:

i. current and active diagnosis;

ii. medication, including dosage and times administered;

iii. allergies;

iv. special dietary needs or restrictions; and

v. next of kin, including contact information if applicable;

e. transportation or arrangements for transportation for an evacuation;

2. provisions for staff to maintain continuity of care during an emergency as well as for distribution and assignment of responsibilities and functions;

3. the delivery of essential care and services to clients who are housed in the facility or by the facility at another location, during an emergency or disaster;

4. the determination as to when the facility will shelter in place and when the facility will evacuate for a disaster or emergency and the conditions that guide these determinations in accordance with local or parish OSHEP;

5. if the center shelters in place, provisions for seven days of necessary supplies to be provided by the center prior to the emergency, including drinking water or fluids and non-perishable food.

D. The center shall:

1. follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency;

2. if the state, parish or local OHSEP orders a mandatory evacuation of the parish or the area in which the agency is serving, shall ensure that all clients are evacuated according to the facility's emergency preparedness plan;

3. not abandon a client during a disaster or emergency;

4. review and update its emergency preparedness plan at least once a year;

5. cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested;

6. monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials;

7. upon request by the department, submit a copy of its emergency preparedness plan for review;

8. upon request by the department, submit a written summary attesting to how the plan was followed and executed to include, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§5407. Inactivation of License due to a Declared Disaster or Emergency

A. A CRC located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the center:

1. submits written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the CRC has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the CRC intends to resume operation as a CRC in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another facility; and

e. lists the clients and the location of the discharged or transferred clients;

2. resumes operating as a CRC in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil fines; and

4. continues to submit required documentation and information to the department.

B. Upon receiving a completed request to inactivate a CRC license, the department shall issue a notice of inactivation of license to the CRC.

C. In order to obtain license reinstatement, a CRC with a department-issued notice of inactivation of license shall:

1. submit a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening that includes:

a. the anticipated date of opening, and a request to schedule a licensing survey;

b. a completed licensing application and other required documents with licensing fees, if applicable; and

c. written approvals for occupancy from OSFM and OPH recommendation for license.

D. Upon receiving a completed written request to reinstate a CRC license and other required documentation, the department shall conduct a licensing survey.

E. If the CRC meets the requirements for licensure and the requirements under this subsection, the department shall issue a notice of reinstatement of the center's license.

F. During the period of inactivation, the department prohibits:

1. a change of ownership (CHOW) in the CRC; and

2. an increase in the licensed capacity from the CRC's licensed capacity at the time of the request to inactivate the license.

G. The provisions of this Section shall not apply to a CRC which has voluntarily surrendered its license.

H. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the CRC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello 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.

Kathy H. Kliebert
Secretary

1410#054

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Public-Private Partnerships
(LAC 50:V.Chapter 29)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.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 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 promulgated an Emergency Rule which adopted provisions governing disproportionate share hospital (DSH) payments for non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative.

The Department promulgated an Emergency Rule which amended the November 1, 2012 Emergency Rule to revise the provisions governing DSH payments to hospitals participating in public-private partnerships to incorporate language approved in the corresponding State Plan Amendment in order to ensure compliance with federal regulations (*Louisiana Register*, Volume 40, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services, and to avoid sanctions from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for noncompliance with the approved state plan.

Effective November 18, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the November 1, 2012 Emergency Rule governing DSH payments to non-state owned hospitals participating in public-private partnerships.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 3. Disproportionate Share Hospital Payments
Chapter 29. Public-Private Partnerships
§2901. Qualifying Criteria

A. Free-Standing Psychiatric Hospitals. Effective for dates of service on or after January 1, 2013, a free-standing psychiatric hospital may qualify for this category by being:

1. a Medicaid enrolled non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility; or

2. a Medicaid enrolled non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§2903. Reimbursement Methodology

A. Qualifying hospitals shall be paid a per diem rate of $581.11 per day for each uninsured patient. Qualifying hospitals must submit costs and patient specific data in a format specified by the department.

B. Cost and lengths of stay will be reviewed for reasonableness before payments are made. Payments shall be made on a monthly basis.

C. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Hospice Services (LAC 50:XV.Chapters 33-43)

The Department of Health and Hospitals, Bureau of Health Services Financing, amends LAC 50:XV.Chapters 33-43 under 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 promulgated an Emergency Rule which amended the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA) and also amended the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program (*Louisiana Register*, Volume 38, Number 3). The department promulgated a Notice of Intent which further revised and clarified the provisions governing hospice services (*Louisiana Register*, Volume 39, Number 11). The department subsequently promulgated an Emergency Rule which amended the provisions of the May 1, 2012 Emergency Rule to incorporate the revisions made in the Notice of Intent and to revise the formatting of these provisions in order to ensure that the provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 39, Number 11). As a result of comments received, the department abandoned the Notice of Intent published in the November 20, 2013 edition of the *Louisiana Register*.

The department promulgated an Emergency Rule which amended the November 20, 2013 Emergency Rule to further clarify the provisions governing prior authorization for hospice services (*Louisiana Register*, Volume 40, Number 3). The department now proposes to amend the March 20, 2014 Emergency Rule to revise the provisions governing prior authorization for hospice services to incorporate language approved in the corresponding state plan amendment in order to ensure compliance with federal regulations. This action is being taken to avoid sanctions from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for noncompliance with PPACA requirements and the approved state plan, and to avoid a budget deficit in the medical assistance programs.

Effective October 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the March 20, 2014 Emergency Rule governing hospice services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 3. Hospice

Chapter 33. Provider Participation

§3301. Conditions for Participation

A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

1.c. - 2. …Repealed.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 35. Recipient Eligibility

§3501. Election of Hospice Care

A. - B. …

1. The election must be filed by the eligible individual or by a person authorized by law (legal representative) to consent to medical treatment for such individual.

a. A legal representative does not have the authority to elect, revoke, or appeal the denial of hospice services if the recipient is able to and wishes to convey a contrary choice.

B.2. - F. …

G. Election Statement Requirements. The election statement must include:

1. …

2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;

3. - 4. …

5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;

2. does not revoke the election under the provisions of §3505; and

3. is not discharged from hospice in accordance with §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§3503. Waiver of Payment for Other Services

A. Individuals who are 21 and over may be eligible for additional personal care services as defined in the Medicaid state plan. Services furnished under the personal care services benefit may be used to the extent that the hospice provider would routinely use the services of the hospice patient's family in implementing the patient's plan of care. The hospice provider must provide services to the individual that are comparable to the services they received through Medicaid prior to their election of hospice. These services include, but are not limited to:

1. pharmaceutical and biological services;

2. durable medical equipment; and

a. - c. Repealed.

3. any other services permitted by federal law;

4. the services listed in §3503.A.1-3 are for illustrative purposes only. The hospice provider is not exempt from providing care if an item or category is not listed.

B. Individuals under age 21 who are approved for hospice may continue to receive curative treatments for their terminal illness; however, the hospice provider is responsible to coordinate all curative treatments related to the terminal illness.

1. *Curative Treatments*—medical treatment and therapies provided to a patient with the intent to improve symptoms and cure the patient's medical problem. Antibiotics, chemotherapy, a cast for a broken limb are examples of curative care.

2. Curative care has as its focus the curing of an underlying disease and the provision of medical treatments to prolong or sustain life.

3. The hospice provider is responsible to provide durable medical equipment or contract for the provision of durable medical equipment. Personal care services, extended home health, and pediatric day health care must be coordinated with hospice services pursuant to §3705.C.

C. Individuals who elect hospice services may also receive early and periodic screening, diagnosis and treatment (EPSDT) personal care services (PCS) concurrently. The hospice provider and the PCS provider must coordinate services and develop the patient's plan of care as set forth in §3705.

D. The hospice provider is responsible for making a daily visit to all clients under the age of 21 and for the coordination of care to assure there is no duplication of services. The daily visit is not required if the person is not in the home due to hospitalization or inpatient respite or inpatient hospice stays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§3505. Revoking the Election of Hospice Care/Discharge

A. - A.4.b. …

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any time file an election, in accordance with §3501, for any other election period that is still available to the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 37. Provider Requirements

§3701. Requirements for Coverage

A. To be covered, a certification of terminal illness must be completed as set forth in §3703, the election of hospice care form must be completed in accordance with §3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the certificate of terminal illness.

B. Prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§3703. Certification of Terminal Illness

A. …

1. For the first 90-day period of hospice coverage, the hospice must obtain a verbal certification no later than two calendar days after hospice care is initiated. If the verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within 10 calendar days following the initiation of hospice care. The written certification and notice of election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day certification, i.e., the date all certification forms are obtained.

a. - c. Repealed.

2. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2.a. - 4. Repealed.

B. Face-to-Face Encounter

1. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The face-to-face encounter must occur no more than 30 calendar days prior to the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

2. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

C. Content of Certifications

1. Certifications shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.

2. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

3. Written clinical information and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be based on the physician's clinical judgment regarding the normal course of the individual's illness filed in the medical record with the written certification, as set forth in §3703.C.

4. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms, or as an addendum to the certification/recertification forms:

a. if the physician includes an addendum to the certification and recertification forms, it shall include, at a minimum:

i. the patient's name;

ii. physician's name;

iii. terminal diagnosis(es);

iv. prognosis; and

v. the name and signature of the IDG member making the referral;

b. the narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients;

c. the narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted;

d. prognosis; and

e. the name and signature of the IDG member taking the referral.

5. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

D. Sources of Certification

1. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

a. the hospice's medical director or physician member of the hospice's interdisciplinary group; and

b. the individual's referring physician.

i. The referring physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

ii. The referring physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

2. For subsequent periods, the only requirement is certification by either the medical director of the hospice or the physician member of the hospice interdisciplinary group.

E. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§3705. Plan of Care

A. - B. …

C. When developing the plan of care (POC), the hospice provider must consult with, and collaborate with the recipient, his/her caregiver, and his/her long-term personal care services provider, and if the recipient is under age 21, his/her extended home nursing provider and/or pediatric day health care provider. If the recipient is receiving any of these services at the time of admission to hospice, the hospice provider must ensure that the POC clearly and specifically details the services and tasks, along with the frequency, to be performed by the non-hospice provider(s), as well as the services and tasks, along with the frequency, that are to be performed by the hospice provider to ensure that services are non-duplicative and that the recipient's needs are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 39. Covered Services

§3901. Medical and Support Services

A. - A.11.b.iv. …

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. General Inpatient Care Day. A general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility that meets the standards as provided in 42 CFR §418.98(a) and for the purpose of pain control or acute or chronic symptom management which cannot be managed in other settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 41. Prior Authorization

§4101. Prior Authorization of Hospice Services

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. The Medicare criteria found in local coverage determination (LCD) hospice determining terminal status (L32015) will be used in analyzing information provided by the hospice to determine if the patient meets clinical requirements for this program.

2. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice, recipient, recipient's legal representative, and nursing facility, if appropriate.

C. Reconsideration. Claims will only be paid from the date of the hospice notice of election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization

request is received 10 days or more after the date on the hospice notice of election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

D. Appeals. If the recipient does not agree with the denial of a hospice prior authorization request, the recipient, the recipient's legal representative, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Chapter 43. Reimbursement

§4303. Levels of Care for Payment

A. - B.3. …

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. …

2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§4305. Hospice Payment Rates

A. - A.2. …

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

b. - d.ii. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§4307. Payment for Long Term Care Residents

A. …

1. who is residing in a nursing facility or intermediate care facility for persons with intellectual disabilities (ICF/ID);

2. who would be eligible under the state plan for nursing facility services or ICF/ID services if he or she had not elected to receive hospice care;

3. …

4. for whom the hospice agency and the nursing facility or ICF/ID have entered into a written agreement in accordance with the provisions set forth in the licensing standards for hospice agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), LR 40:

§4309. Limitation on Payments for Inpatient Care

A. …

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient respite care days for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#055

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Children's Specialty Hospitals Reimbursements
(LAC 50:V.967)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.967 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.

Due to a budgetary shortfall in SFY 2013, 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 paid to non-rural, non-state hospitals, including children's specialty hospitals (*Louisiana Register*, Volume 40, Number 2).

The department has now determined that it is necessary to amend the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals to revise the reimbursement methodology and establish outlier payment provisions. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining access to neonatal and pediatric intensive care unit services and encouraging the continued participation of hospitals in the Medicaid Program. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately $2,535,283 for state fiscal year 2014-2015.

Effective October 4, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by children's specialty hospitals.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospitals
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§967. Children's Specialty Hospitals

A. Routine Pediatric Inpatient Services. For dates of service on or after October 4, 2014, payment shall be made per a prospective per diem rate that is 81.1 percent of the routine pediatric inpatient cost per day as calculated per the "as filed" fiscal year end cost report ending during SFY 2014. The "as filed" cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

1. Repealed.

B. Inpatient Psychiatric Services. For dates of service on or after October 4, 2014, payment shall be a prospective per diem rate that is 100 percent of the distinct part psychiatric cost per day as calculated per the as filed fiscal year end cost report ending during SFY 2014. The as filed cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

1. Repealed.

C. Carve-Out Specialty Services. These services are rendered by neonatal intensive care units, pediatric intensive care units, burn units and include transplants.

1. Transplants. Payment shall be the lesser of costs or the per diem limitation for each type of transplant. The base period per diem limitation amounts shall be calculated using the allowable inpatient cost per day for each type of transplant per the cost reporting period which ended in SFY 2009. The target rate shall be inflated using the update factors published by the Centers for Medicare and Medicaid (CMS) beginning with the cost reporting periods starting on or after January 1, 2010.

a. For dates of service on or after September 1, 2009, payment shall be the lesser of the allowable inpatient costs as determined by the cost report or the Medicaid days for the period for each type of transplant multiplied times the per diem limitation for the period.

2. Neonatal Intensive Care Units, Pediatric Intensive Care Units, and Burn Units. For dates of service on or after October 4, 2014, payment for neonatal intensive care units, pediatric intensive care units, and burn units shall be made per prospective per diem rates that are 84.5 percent of the cost per day for each service as calculated per the "as filed" fiscal year end cost report ending during SFY 2014. The "as filed" cost report will be reviewed by the department for accuracy prior to determination of the final per diem rate.

D. Children's specialty hospitals shall be eligible for outlier payments for dates of service on or after October 4, 2014.

1. Repealed.

E. …

1. Repealed.

F. Effective for dates of service on or after February 3, 2010, the per diem rates as calculated per §967.C.1 above shall be reduced by 5 percent. Effective for dates of service on or after January 1, 2011, final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 95 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

G. Effective for dates of service on or after August 1, 2010, the per diem rates as calculated per §967.C.1 above shall be reduced by 4.6 percent. Effective for dates of service on or after January 1, 2011, final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 90.63 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

H. Effective for dates of service on or after January 1, 2011, the per diem rates as calculated per §967.C.1 above shall be reduced by 2 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 88.82 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

I. …

J. Effective for dates of service on or after August 1, 2012, the per diem rates as calculated per §967.C.1 above shall be reduced by 3.7 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 85.53 percent of the target rate per diem limitation as specified per §967.C.1 for the period.

K. Effective for dates of service on or after February 1, 2013, the per diem rates as calculated per §967.C.1 above shall be reduced by 1 percent. Final payment shall be the lesser of allowable inpatient acute care costs as determined by the cost report or the Medicaid days as specified per §967.C.1 for the period, multiplied by 84.67 percent of the target rate per diem limitation as specified per §967.C.1 for the 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, Bureau of Health Services Financing, LR 36:2562 (November 2010), amended LR 37:2162, 2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#015

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Supplemental Payments
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953 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 Act 14 of the 2013 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.

Due to a continuing budgetary shortfall in SFY 2014, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the total supplemental payments pool for non-rural, non-state hospitals and to change the frequency of payments (*Louisiana Register*, Volume 39, Number 11).

The Department of Health and Hospitals promulgated a Rule which adjusted the reimbursement rates paid for neonatal intensive care unit and pediatric intensive care unit services rendered by non-rural, non-state hospitals and to revise the outlier payment methodology (*Louisiana Register*, Volume 39, Number 11). The department promulgated Rules which amended the provisions governing the reimbursement methodology for inpatient hospital services to revise the participation requirements for the low income and needy care collaboration and to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 39, Number 12 and Volume 40, Number 2). However, the provisions in Section 953 of the December 20, 2013 Rule inadvertently omitted the provisions of the November 20, 2011 Rule; and subsequently, the provisions in Section 953 of the February 20, 2014 Rule inadvertently omitted the provisions of the December 20, 2013 Rule.

To ensure the provisions governing the reimbursement methodology for inpatient hospital services are appropriately promulgated in the *Louisiana Administrative Code* (LAC), the department re-promulgated the December 20, 2013 and February 20, 2014 rules governing inpatient hospital services rendered by non-rural, non-state hospitals in order to incorporate the provisions which were inadvertently omitted (*Louisiana Register*, Volume 40, Number 10).

This Emergency Rule is being promulgated to continue the provisions of the November 20, 2013 Emergency Rule and to incorporate the provisions of the re-promulgated December 20, 2013 and February 20, 2014 Rules in order to assure that the provisions are properly formatted in the LAC. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the November 20, 2013 Emergency Rule governing the reimbursement methodology for inpatient hospital services to reduce the supplemental payments pool for non-rural, non-state hospitals.

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

§953. Acute Care Hospitals

A. - S. ...

T. Effective for dates of service on or after November 20, 2013, supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be annual. The amount appropriated for annual

supplemental payments shall be reduced to $1,000,000. Each qualifying hospital's annual supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Public-Private Partnerships
Reimbursement Methodology
(LAC 50:V.1703)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1703 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 promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services. Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative (*Louisiana Register*, Volume 39, Number 11). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient psychiatric hospital services provided by non-state owned hospitals participating in public-private partnerships (*Louisiana Register*, Volume 39, Number 1). In April 2013, the department promulgated an Emergency Rule to continue the provisions of the January 2, 2013 Emergency Rule (*Louisiana Register*, Volume 39, Number 4).

The department amended the provisions governing the reimbursement methodology for inpatient services provided by non-state owned major teaching hospitals participating in public-private partnerships which assume the provision of services that were previously delivered and terminated or reduced by a state-owned and operated facility to establish an interim per diem reimbursement (*Louisiana Register*, Volume 39, Number 4). In June 2013, the department determined that it was necessary to rescind the January 2, 2013 and the May 3, 2013 Emergency Rules governing Medicaid payments to non-state owned hospitals for inpatient psychiatric hospital services (*Louisiana Register*, Volume 39, Number 6). The department promulgated an Emergency Rule which amended the provisions of the April 15, 2013 Emergency Rule in order to revise the formatting of these provisions as a result of the promulgation of the June 1, 2013 Emergency Rule to assure that these provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code* (LAC) (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective November 16, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing Medicaid payments for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 17. Public-Private Partnerships
§1703. Reimbursement Methodology

A. Reserved.

B. Effective for dates of service on or after April 15, 2013, a major teaching hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to provide acute care hospital services to Medicaid and uninsured patients and which assumes providing services that were previously delivered and terminated or reduced by a state owned and operated facility shall be reimbursed as follows:

1. The inpatient reimbursement shall be reimbursed at 95 percent of allowable Medicaid costs. The interim per diem reimbursement may be adjusted not to exceed the final reimbursement of 95 percent of allowable Medicaid costs.

C. - E.3. Reserved.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to

MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Public-Private Partnerships
Supplemental Payments
(LAC 50:V.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 17 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 promulgated an Emergency Rule which amended the provisions governing inpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned and operated hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-provider partnership initiative. This Emergency Rule is being promulgated to continue the provisions of the November 1, 2012 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 28, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to establish supplemental Medicaid payments for inpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 17. Public-Private Partnerships

§1701. Qualifying Hospitals

A. Non-State Privately Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall provide supplemental Medicaid payments for inpatient hospital services rendered by non-state privately owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

B. Non-State Publicly Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for inpatient hospital services rendered by non-state publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

C. Non-State Free-Standing Psychiatric Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for inpatient psychiatric hospital services rendered by non-state privately or publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately or publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of inpatient Medicaid and uninsured psychiatric hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§1703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis 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 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Developmental Disabilities—Public Facilities Reimbursement Methodology
(LAC 50:VII.32969)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32969 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 amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD) to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 39, Number 2). This Rule also adopted all of the provisions governing reimbursements to state-owned and operated facilities and quasi-public facilities in a codified format for inclusion in the *Louisiana Administrative Code*.

The department amended the provisions governing the transitional rates for public facilities in order to redefine the period of transition (*Louisiana Register*, Volume 39, Number 10). The department subsequently promulgated an Emergency Rule to assure compliance with the technical requirements of R.S. 49:53, and to continue the provisions of the October 1, 2013 Emergency Rule governing transitional rates for public facilities which redefined the period of transition (*Louisiana Register*, Volume 40, Number 3). This Emergency Rule is being promulgated to continue the provisions of the February 22, 2014 Emergency Rule. This action is being taken to protect the health and welfare of Medicaid recipients transitioning from public ICFs/DD.

Effective October 22, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part VII. Long Term Care
Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities
Chapter 329. Reimbursement Methodology
Subchapter C. Public Facilities
§32969. Transitional Rates for Public Facilities

A. - A.4.a. …

B. The transitional Medicaid reimbursement rate shall only be for the period of transition, which is defined as the term of the CEA or a period of four years, whichever is shorter.

C. - F.4. …

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 39:326 (February 2013), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Intellectual Disabilities Complex Care Reimbursements
(LAC 50:VII.32915)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:VII.32915 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 currently provides Medicaid reimbursement to non-state intermediate care facilities for

persons with intellectual disabilities (ICFs/ID) for services provided to Medicaid recipients.

The department now proposes to amend the provisions governing the reimbursement methodology for ICFs/ID to establish reimbursement for complex care services provided to Medicaid recipients residing in non-state ICFs/ID. This action is being taken to protect the public health and welfare of Medicaid recipients with complex care needs who reside in ICFs/ID. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately $3,062,145 for state fiscal year 2014-2015.

Effective October 1, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend the provisions governing non-state ICFs/ID to establish reimbursement for complex care services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Intellectual Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32915. Complex Care Reimbursements

A. Effective for dates of service on or after October 1, 2014, non-state intermediate care facilities for persons with intellectual disabilities may receive an add-on payment to the per diem rate for providing complex care to Medicaid recipients who require such services. The add-on rate adjustment shall be a flat fee amount and may consist of payment for any one of the following components:

1. equipment only;
2. direct service worker (DSW);
3. nursing only;
4. equipment and DSW;
5. DSW and nursing;
6. nursing and equipment; or
7. DSW, nursing, and equipment.

B. Non-state owned ICFs/ID may qualify for an add-on rate for recipients meeting documented major medical or behavioral complex care criteria. This must be documented on the complex support need screening tool provided by the department. All medical documentation indicated by the screening tool form and any additional documentation requested by the department must be provided to qualify for the add-on payment.

C. In order to meet the complex care criteria, the presence of a significant medical or behavioral health need must exist and be documented. This must include:

1. endorsement of at least one qualifying condition with supporting documentation; and

2. endorsement of symptom severity in the appropriate category based on qualifying condition(s) with supporting documentation.

a. Qualifying conditions for complex care must include at least one of the following as documented on the complex support need screening tool:

i. significant physical and nutritional needs requiring full assistance with nutrition, mobility, and activities of daily living;

ii. complex medical needs/medically fragile; or

iii. complex behavioral/mental health needs.

D. Enhanced Supports. Enhanced supports must be provided and verified with supporting documentation to qualify for the add-on payment. This includes:

1. endorsement and supporting documentation indicating the need for additional direct service worker resources;

2. endorsement and supporting documentation indicating the need for additional nursing resources; or

3. endorsement and supporting documentation indicating the need for enhanced equipment resources (beyond basic equipment such as wheelchairs and grab bars).

E. One of the following admission requirements must be met in order to qualify for the add-on payment:

1. the recipient has been admitted to the facility for more than 30 days with supporting documentation of necessity and provision of enhanced supports; or

2. the recipient is transitioning from another similar agency with supporting documentation of necessity and provision of enhanced supports.

F. All of the following criteria will apply for continued evaluation and payment for complex care.

1. Recipients receiving enhanced rates will be included in annual surveys to ensure continuation of supports and review of individual outcomes.

2. Fiscal analysis and reporting will be required annually.

3. The provider will be required to report on the following outcomes:

a. hospital admissions and diagnosis/reasons for admission;

b. emergency room visits and diagnosis/reasons for admission;

c. major injuries;

d. falls; and

e. behavioral incidents.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#011

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
(LAC 50:XXVII.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals and replaces the provisions of the October 20, 1994 Rule governing non-emergency medical transportation, and amends LAC 50:XXVII.Chapter 5 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 governing non-emergency medical transportation (NEMT) (*Louisiana Register*, Volume 20, Number 10). The department has now determined that it is necessary to repeal the October 20, 1994 Rule in order to revise the provisions governing NEMT services, and to ensure that these provisions are appropriately promulgated in a codified format for inclusion in the *Louisiana Administrative Code*. This Emergency Rule will also amend the provisions governing the reimbursement methodology for NEMT services to replace the monthly payment of capitated rates with a monthly per trip payment methodology.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to non-emergency medical transportation services. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2014-15.

Effective October 1, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXVII. Medical Transportation Program
Chapter 5. Non-Emergency Medical Transportation
Subchapter A. General Provisions

§501. Introduction

A. Non-emergency medical transportation (NEMT) is non-emergency transportation to and from the providers of routine Medicaid covered services for Medicaid recipients. NEMT is intended to provide transportation only after all reasonable means of free transportation have been explored and found to be unavailable.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§503. Prior Authorization

A. NEMT services require prior authorization. The department or its designee will authorize transportation after verifying the recipient's Medicaid eligibility and validity of medical appointment(s).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§505. Requirements for Coverage

A. When transportation is not available through family and friends, payment shall be authorized for the least costly means of transportation available. The least costly means of transportation shall be determined by the department and shall be determined according to the following hierarchy:

1. city or parish public transportation;
2. family and friends who meet the state license and insurance requirements and who are willing to:
   a. enroll in the Medicaid Program; and
   b. be paid a published rate for providing non-emergency transportation;
3. intrastate public conveyance (such as bus, train or plane);
4. nonprofit agencies and organizations that provide a transportation service and who are enrolled in the Medicaid Program; and
5. for profit providers enrolled in the Medicaid Program.

B. Recipients shall be allowed a choice of providers when the costs of two or more providers are equal.

C. Recipients are encouraged to utilize medical providers of their choice in the community in which they reside when the recipient is also in need of Medicaid reimbursed transportation services. The fact that the department will still pay for the actual medical service received outside the community in which the recipient resides does not obligate the department to reimburse for transportation to accommodate such a choice.

D. When the recipient chooses to utilize a medical provider outside of the community due to preference and/or history, payment may be authorized only for the cost of transportation to the nearest available provider.

E. The recipient may be responsible for securing any agreements with family and friends, nonprofit or profit providers to make the longer trip for the payment authorized. If the recipient needs help with making such arrangements, the department will help but the help given will imply no obligation to provide a greater reimbursement.

F. When specialty treatment required by the recipient necessitates travel over extended distances, authorization for payment for intrastate transportation shall be determined according to the following criteria.

1. Intrastate transportation reimbursement shall be authorized when medical services are not available to the recipient in his/her community.
2. Payment shall be authorized when free transportation is not available.
3. The department shall still authorize payment only for the most economical means of transportation. This may be through negotiating payment for transportation with family and or friends or through accessing the public conveyance systems such as bus, train or plane.
4. The determination as to use of public conveyance shall be based on least cost, medical condition of the recipient to be transported, and availability of public conveyance.

G. When it has been verified that public conveyance is unavailable or inappropriate for intrastate transportation the

recipient shall solicit transportation from family and friends. The department will authorize payment to assist the family in accessing the needed medical services.

1. Payment will be based on distance to be traveled to the nearest available similar or appropriate medical services, parking and tolls. In determining the amount of payment the cost of the least costly public conveyance shall be used as the base cost to be paid to the family. Payment shall not be available for room and board or meals.

H. When no other means of transportation is available through family and friends or public conveyance, the department will solicit intrastate transportation through a nonprofit provider.

1. The nonprofit provider will be paid a fee based on the current fee schedule.

2. If the nonprofit provider cannot accept the trip then the department will reimburse for-profit providers based on the current fee schedule.

I. The department will not authorize "same day" trips except in the instance of need for immediate medical care due to injury or illness. Same day trips will not be authorized for scheduled appointments for predictable or routine medical care. Recipients will be asked to reschedule the appointment and make the subsequent request for transportation timely.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter B. Recipient Responsibilities

§521. General Provisions

A. Recipients shall participate in securing transportation at a low cost and shall agree to use public transportation or solicit transportation from family and friends as an alternative to more costly means of transport.

B. When the recipient alleges that public conveyance cannot be used due to medical reasons, then verification shall be provided by giving the department a written statement from a doctor that includes the specific reason(s) that the use of public conveyance is contraindicated by the medical condition of the recipient. In no case can preference of the recipient be the sole determining factor in excluding use of public conveyance.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter C. Provider Responsibilities

§541. Provider Enrollment

A. For-profit providers must comply with all state laws and the regulations of any other governing state agency or commission or local entity to which they are subject as a condition of enrollment and continued participation in the Medicaid Program.

B. Nonemergency medical transportation profit providers shall have a minimum liability insurance coverage of $100,000 per person and $300,000 per accident or a $300,000 combined service limits policy.

1. The liability policy shall cover any and all:

a. autos;

b. hired autos; and

c. non-owned autos.

2. Premiums shall be prepaid for a period of six months. Proof of prepaid insurance must be a true and correct copy of the policy issued by the home office of the insurance company. Statements from the agent writing the policy will not be acceptable. Proof must include the dates of coverage and a 30 day cancellation notification clause. Proof of renewal must be received by the department no later than 48 hours prior to the end date of coverage. The policy must provide that the 30 day cancellation notification be issued to the Bureau of Health Services Financing.

3. Upon notice of cancellation or expiration of the coverage, the department will immediately cancel the provider agreement for participation. The ending date of participation shall be the ending date of insurance coverage. Retroactive coverage statements will not be accepted. Providers who lose the right to participate due to lack of prepaid insurance may re-enroll in the transportation program and will be subject to all applicable enrollment procedures, policies, and fees for new providers.

C. As a condition of reimbursement for transporting Medicaid recipients to medical services, family and friends must maintain the state minimum automobile liability insurance coverage, a current state inspection sticker, and a current valid driver's license. No special inspection by the department will be conducted. Proof of compliance with the three listed requirements for this class of provider must be submitted when enrollment in the department is sought. Proof shall be the sworn and notarized statement of the individual enrolling for payment, certifying that all three requirements are met. Family and friends shall be enrolled and shall be allowed to transport up to three specific Medicaid recipients or all members of one Medicaid assistance unit. The recipients to be transported by each such provider will be noted in the computer files of the department. Individuals transporting more than three Medicaid recipients shall be considered profit providers and shall be enrolled as such.

D. As a condition of participation for out-of-state transport, providers of transportation to out-of-state medical services must be in compliance with all applicable federal intrastate commerce laws regarding such transportation, including but not limited to, the $1,000,000 insurance requirement. Proof of compliance with all interstate commerce laws must be submitted when enrollment in the Medicaid Program is sought or prior to providing any out-of-state Medicaid transportation.

E. A provider must agree to cover the entire parish or parishes for which he provides nonemergency medical transportation services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§543. Trip Coordination

A. Dispatch personnel will coordinate to the extent possible, trips for family members so that all recipients in a family are transported as a unit at one time to the same or close proximity providers.

B. Providers must submit a signed affidavit with claims certifying that a true and correct bill is being submitted.

C. If the provider has declined to accept a trip on a particular day the dispatch personnel will not assign additional trips to that provider for that same day.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§545. Provider Suspension and Termination

A. Providers are subject to suspension from the NEMT Program upon department documentation of inappropriate billing practices.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Subchapter D. Reimbursement

§565. General Provisions

A. Reimbursement for NEMT services shall be based upon the current fee schedule.

B. Reimbursement for NEMT to regular, predictable and continuing medical services, such as hemodialysis, chemotherapy or rehabilitation therapy, as determined by the department, shall be based on a capitated rate paid by individual trip.

C. Reimbursement will not be made for any additional person(s) who must accompany the recipient to the medical provider.

D. An individual provider will be reimbursed for a trip to the nearest facility that will meet the recipient's medical needs. However, the individual provider may transport the recipient to a more distant facility if the individual provider will accept reimbursement from the department to the nearest facility and assumes responsibility for additional expenses incurred.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§573. Non-Emergency, Non-Ambulance Transportation

A. - F.5. ...

G. Effective for dates of service on or after October 1, 2014, the monthly payment of capitated rates shall be replaced with a per trip payment methodology.

1. Payments previously made using the monthly capitated rate shall be made by dividing the monthly rate by the number of authorized trips within a given month. Each trip will then be reimbursed separately.

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 33:462 (March 2007), LR 34:878 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2564 (November 2010), LR 37:3030 (October 2011), amended LR 38:3214 (December 2012), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#012

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Leave of Absence Days
Reimbursement Reduction
(LAC 50:II.20021)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20021 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 amended the provisions governing reimbursement to nursing facilities to reduce the reimbursement paid to nursing facilities for leave of absence days (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for leave of absence days (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 28, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to reduce the reimbursement rates for leave of absence days.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter200. Reimbursement Methodology
§20021. Leave of Absence Days
[Formerly LAC 50:VII.1321]

A. - E. ...

F. Effective for dates of service on or after July 1, 2013, the reimbursement paid for leave of absence days shall be 10 percent of the applicable per diem rate in addition to the provider fee amount.

1. The provider fee amount shall be excluded from the calculations when determining the leave of absence days payment amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#063

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Per Diem Rate Reduction
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 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.

For state fiscal year 2014-15, state general funds are required to continue nursing facility rates at the rebased level. Because of the fiscal constraints on the state's budget, the state general funds will not be available to sustain the increased rate. Consequently, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to reduce the per diem rates paid to non-state nursing facilities (*Louisiana Register*, Volume 40, Number 5). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2014 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 30, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to reduce the reimbursement rates for non-state nursing facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination
[Formerly LAC 50:VII.1305]

A. - O. …

P. Reserved.

Q. Effective for dates of service on or after July 1, 2014, the per diem rate paid to non-state nursing facilities, shall be reduced by $90.26 of the rate in effect on June 30, 2014 until such time that the rate is rebased.

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:092 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 39:3097 (November 2013), LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#064

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Per Diem Rate Reduction
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20005 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 amended the provisions governing the reimbursement methodology for nursing facilities to reduce the per diem rates paid to non-state nursing facilities in order to remove the rebased amount and sunset the state fiscal year (SFY) 2012-13 nursing facility rate rebasing (*Louisiana Register*, Volume 39, Number 5).

For SFY 2013-14, state general funds are required to continue nursing facility rates at the rebased level. Because of the fiscal crisis facing the state, the state general funds will not be available to sustain the increased rates. Consequently, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for non-state nursing facilities (*Louisiana Register*, Volume 39, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule. This action

is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 28, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to reduce the reimbursement rates for non-state nursing facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20005. Rate Determination
[Formerly LAC 50:VII.1305]

A. - I. …

J. - N. Reserved.

O. …

P. Effective for dates of service on or after July 1, 2013, the per diem rate paid to non-state nursing facilities, excluding the provider fee, shall be reduced by $18.90 of the rate in effect on June 30, 2013 until such time that the rate is rebased.

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:092 (March 2011), LR 37:1174 (April 2011), LR 37:2631 (September 2011), LR 38:1241 (May 2012), LR 39:1286 (May 2013), LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#065

DECLARATION OF EMERGENCY

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

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

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amend LAC 50:II.10156 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with 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 amended the provisions governing the standards for payment for nursing facilities to clarify level of care determinations (*Louisiana Register*, Volume 39, Number 6).

The department promulgated an Emergency Rule which amended the provisions governing level of care pathways in order to clarify the provisions of the June 20, 2013 Rule (*Louisiana Register*, Volume 40, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule. This action is being taken to promote the well-being of Louisiana citizens by clarifying the criteria for the level of care determination for nursing facility admission and continued stay.

Effective November 18, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services amend the provisions governing the level of care pathways for nursing facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Medical Assistance Program
Subpart 3. Standards for Payment
Chapter 101. Standards for Payment for Nursing Facilities
Subchapter G. Levels of Care
§10156. Level of Care Pathways

A. - B. ...

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

1. ...

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

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

F. Physician Involvement Pathway

1. - 2. ...

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

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

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

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

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

i. - ii. ...

iii. physically abusive;

iv. socially inappropriate or disruptive; or

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

i. - iii. ...

iv. socially inappropriate or disruptive; or

c. experienced delusions or hallucinations within the screening tool's seven-day look-back period that

impacted his/her ability to live independently in the community; or

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

i. wandering;

ii. verbally abusive;

iii. physically abusive;

iv. socially inappropriate or disruptive; or

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

J. - J.3. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:342 (January 2011), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:1471 (June 2013), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Outpatient Hospital Services
Public-Private Partnerships
Supplemental Payments
(LAC 50:V.Chapter 67)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 67 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 promulgated an Emergency Rule which amended the provisions governing outpatient hospital services to establish supplemental Medicaid payments to non-state owned hospitals in order to encourage them to take over the operation and management of state-owned hospitals that have terminated or reduced services (*Louisiana Register*, Volume 38, Number 11). Participating non-state owned hospitals shall enter into a cooperative endeavor agreement with the department to support this public-private partnership initiative. The department promulgated an Emergency Rule which amended the provisions of the November 1, 2012 Emergency Rule to revise the reimbursement methodology in order to correct the federal citation (*Louisiana Register*, Volume 39, Number 3). This Emergency Rule continues the provisions of the March 2, 2013 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by maintaining recipient access to much needed hospital services.

Effective October 28, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing supplemental Medicaid payments for outpatient hospital services provided by non-state owned hospitals participating in public-private partnerships.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 67. Public-Private Partnerships

§6701. Qualifying Hospitals

A. Non-State Privately Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall provide supplemental Medicaid payments for outpatient hospital services rendered by non-state privately owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of outpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

B. Non-State Publicly Owned Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for outpatient hospital services rendered by non-state publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of outpatient Medicaid and uninsured hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

C. Non-State Free-Standing Psychiatric Hospitals. Effective for dates of service on or after November 1, 2012, the department shall make supplemental Medicaid payments for outpatient psychiatric hospital services rendered by non-

state privately or publicly owned hospitals that meet the following conditions.

1. Qualifying Criteria. The hospital must be a non-state privately or publicly owned and operated hospital that enters into a cooperative endeavor agreement with the Department of Health and Hospitals to increase its provision of outpatient Medicaid and uninsured psychiatric hospital services by:

a. assuming the management and operation of services at a facility where such services were previously provided by a state owned and operated facility; or

b. providing services that were previously delivered and terminated or reduced by a state owned and operated facility.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§6703. Reimbursement Methodology

A. Payments to qualifying hospitals shall be made on a quarterly basis in accordance with 42 CFR 447.321.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#067

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 hereby rescinds the provisions of the November 1, 2012 Emergency Rule which revised the reimbursement methodology for pharmacy services covered under the Medical Assistance Program as authorized by R.S. 36:254. This Emergency Rule was adopted on October 19, 2012 and published in the November 20, 2012 edition of the *Louisiana Register.* 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. The department promulgated an Emergency Rule which amended the provisions of the September 5, 2012 Emergency Rule to further revise the provisions governing the methods of payment for prescription drugs and the dispensing fee (*Louisiana Register*, Volume 38, Number 11).

Upon further consideration and consultation with the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS) on the corresponding Medicaid state plan amendment, the department has determined that it is necessary to rescind the provisions of the November 1, 2012 Emergency Rule governing the reimbursement methodology for services rendered in the Pharmacy Benefits Management Program, and to return to the reimbursement rates in effect on September 5, 2012 which is consistent with the currently approved Medicaid state plan.

Effective October 1, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds the Emergency Rule governing pharmacy services which appeared in the November 20, 2013 edition of the *Louisiana Register* on pages 2725-2728.

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#010

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Benefits Management Program
State Supplemental Rebate Agreement Program
(LAC 50:XXIX.Chapter 11)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXIX.Chapter 11 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 coverage of prescription drugs through its Pharmacy Benefits Management Program. The department amended the provisions governing the Pharmacy Benefits Management Program in order to establish provisions for the Medicaid Program's participation in The Optimal PDL $olution (TOP$) State Supplemental Rebate Agreement Program which is a multi-state Medicaid state supplemental drug rebate pooling initiative (*Louisiana Register*, Volume 39, Number 10). This program allows states to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates than could be achieved independently. It is anticipated that this program will lower

the net cost of brand drugs and the overall dollars spent on pharmacy benefits. The department promulgated an Emergency Rule to assure compliance with the technical requirements of R.S. 49:953, and to continue the provisions of the October 1, 2013 Emergency Rule governing the Pharmacy Benefits Management Program which established provisions for the Medicaid Program's participation in The Optimal PDL $olution (TOP$) State Supplemental Rebate Agreement Program (*Louisiana Register*, Volume 40, Number 3). This Emergency Rule is being promulgated to continue the provisions of the February 22, 2014 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 22, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Medicaid coverage of prescription drugs to establish provisions for participation in TOP$ State Supplemental Rebate Agreement Program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy
Chapter 11. State Supplemental Rebate Agreement Program
§1101. General Provisions

A. Effective October 1, 2013, the Department of Health and Hospitals, Bureau of Health Services Financing hereby establishes provisions for participation in The Optimal PDL $olution (TOP$) State Supplemental Rebate Agreement (SRA) Program. TOP$ is a multi-state Medicaid state supplemental drug rebate pooling initiative approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services and administered by Provider Synergies, L.L.C/Magellan Medicaid Administration. The purpose of this program is to allow states the opportunity to leverage their pharmaceutical purchasing power as a group to achieve more supplemental rebates and discounts from prescription drug companies than could be achieved independently.

B. Pursuant to R.S. 46:153.3, the department shall enter into a contractual agreement with Provider Synergies to participate in TOP$. Provider Synergies/Magellan Medicaid Administration will act on the department's behalf to provide the necessary administration services relative to this agreement for the provision of state supplemental drug rebate contracting and preferred drug list administration services.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#068

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Prohibition of Provider Steering of Medicaid Recipients
(LAC 50:I.Chapter 13)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:I.Chapter 13 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This 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 administers the Medicaid Program which provides health care coverage to eligible recipients through Medicaid contracted managed care entities and/or through Medicaid fee-for-service.

The department promulgated an Emergency Rule which adopted provisions prohibiting Medicaid providers and contracted managed care entities from engaging in provider steering in order to ensure the integrity of Medicaid recipients' freedom of choice in choosing a particular health plan in which to enroll and, when eligible, the freedom of choice in deciding whether or not to receive care through Medicaid fee-for-service (*Louisiana Register*, Volume 39, Number 12). This Emergency Rule also established criteria for the sanctioning of providers and managed care entities who engage in provider steering of Medicaid recipients. The department promulgated an Emergency Rule which amended the December 1, 2013 Emergency Rule in order to clarify these provisions and to incorporate provisions governing provider appeals (*Louisiana Register*, Volume 40, Number 3). The department has now determined that it is necessary to amend the provisions of the March 20, 2014 Emergency Rule to further clarify these provisions.

This action is being taken to avoid federal sanctions from the Centers for Medicare and Medicaid Services (CMS) by ensuring the integrity of Medicaid recipients' freedom of choice in choosing a health care provider, and to ensure compliance with the federal regulations which apply to contract requirements contained in 42 CFR §438.104.

Effective October 20, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the March 20, 2014 Emergency Rule governing the prohibition of provider steering of Medicaid Recipients.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 1. General Provisions
Chapter 13. Prohibition of Provider Steering
§1301. General Provisions

A. Definitions

Health Plan—any managed care organization (MCO), prepaid inpatient *health plan* (PIHP), prepaid ambulatory *health plan* (PAHP), or primary care case management (PCCM) entity contracted with the Medicaid Program.

Provider—any Medicaid service *provider* contracted with a health plan and/or enrolled in the Medicaid Program.

Provider Steering—unsolicited advice or mass-marketing directed at Medicaid recipients by health plans, including any of the entity's employees, affiliated providers, agents, or contractors, that is intended to influence or can reasonably be concluded to influence the Medicaid recipient to enroll in, not enroll in, or disenroll from a particular health plan(s).

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§1303. Provider Sanctions

A. First Offense. If the department determines that a provider has participated in provider steering, the department will notify the provider in writing and, at its sole discretion, may impose any of the following sanctions as applicable.

1. If a provider has steered a Medicaid recipient to enroll in a particular managed care health plan, payments to the provider for services rendered to the Medicaid recipient for the time period the recipient's care was coordinated by the health plan may be recouped.

2. If a provider has steered a Medicaid recipient to participate in Medicaid fee-for-service, payments to the provider for services rendered to the recipient for the time period the recipient's care was paid for through Medicaid fee-for-service may be recouped.

3. A provider may be assessed a monetary sanction of up to $1,000 for each recipient steered to join a particular managed care health plan or to participate in Medicaid fee-for-service. The maximum total penalty per incident shall not exceed $10,000.

4. A provider may be required to submit a letter to the particular Medicaid recipient notifying him/her of the imposed sanction and his/her right to freely choose another participating managed care health plan or, if eligible, participate in Medicaid fee-for-service.

B. Second Offense

1. If a provider continues to participate in provider steering after having been cited once for provider steering, and receiving one of the above sanctions, that provider may then be subject to disenrollment from the Medicaid program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§1305. Provider Appeal Rights

A. Informal Hearing

1. A provider who has received a notice of sanction shall be provided with an informal hearing if the provider makes a written request for an informal hearing within 15 days of the mailing of the notice of sanction. The request for an informal hearing must be made in writing and sent in accordance with the instructions contained in the notice of sanction. The time and place for the informal hearing will be provided in the notice scheduling the informal hearing.

2. Following the informal hearing, the department shall inform the provider, by written notice, of the results of the informal hearing. The provider has the right to request an administrative appeal within 30 days of the date on the notice of the informal hearing results that is mailed to the provider.

B. Administrative Appeals

1. The provider may seek an administrative appeal of the department's decision to impose sanctions.

2. If the provider timely requests an informal hearing, the 30 days for filing an appeal with the DAL will commence on the date the notice of the informal hearing results are mailed or delivered to the provider.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:

§1307. Health Plan Sanctions

A. If the department determines the Health Plan or its subcontractors has participated in provider steering, the department, at its sole discretion, may impose the following sanctions.

1. The member(s) may be disenrolled from the health plan at the earliest effective date allowed.

2. Up to 100 percent of the monthly capitation payment or care management fee for the month(s) the member(s) was enrolled in the health plan may be recouped.

3. The health plan may be assessed a monetary penalty of up to $5,000 per member.

4. The health plan may be required to submit a letter to each member notifying he member of their imposed sanction and of their right to choose another 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, Bureau of Health Services Financing, LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#057

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Targeted Case Management
Reimbursement Methodology
(LAC 50:XV.10701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.10701 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.

As a result of a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management (TCM) services to reduce the reimbursement rates and to revise these provisions as a result of the promulgation of the January 2013 Emergency Rules which terminated Medicaid reimbursement of TCM services provided to first-time mothers in the Nurse Family Partnership Program and TCM services rendered to HIV disabled individuals (*Louisiana Register*, Volume 39, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for TCM services provided to new opportunities waiver (NOW) recipients in order to adopt a payment methodology based on a flat monthly rate rather than 15-minute increments (*Louisiana Register*, Volume 40, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2014 Emergency Rule. This action is being taken to promote the health and welfare of NOW participants by ensuring continued access to Medicaid covered services.

Effective October 30, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for TCM for NOW services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart7. Targeted Case Management

Chapter 107. Reimbursement

§10701. Reimbursement

A. - H.3.a. …

I. - J. Reserved

K. Effective for dates of service on or after July 1, 2014, reimbursement for case management services provided to participants in the new opportunities waiver shall be reimbursed at a flat rate for each approved unit of service.

1. The standard unit of service is equivalent to one month and covers both service provision and administrative costs.

a. Service provision includes the core elements in:

i. §10301 of this Chapter;

ii. the case management manual; and

iii. contracted performance agreements.

2. All services must be prior authorized.

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 30:1040 (May 2004), amended LR 31:2032 (August 2005), amended LR 35:73 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), amended LR 36:1783 (August 2010), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:97 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:3302 (December 2013), LR 40:

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 or by email to MedicaidPolicy@la.gov. Ms. Kennedy 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.

Kathy H. Kliebert
Secretary

1410#069

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Therapeutic Group Homes
Licensing Standards
(LAC 48:I.Chapter 62)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 62 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009. 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 the directives of R.S. 40:2009, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the minimum licensing standards for therapeutic group homes(TGH)in order to prepare for the transition to a comprehensive system of delivery for behavioral health services in the state (*Louisiana Register*, Volume 38, Number 2).

The department promulgated an Emergency Rule which amended the provisions governing TGH licensing standards to revise the current TGH licensing regulations (*Louisiana Register*, Volume 40, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 20, 2014 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services. It is estimated that the implementation of this Emergency Rule will have no fiscal impact to the Medicaid Program for state fiscal year 2014-2015.

Effective November 18, 2014, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the licensing standards for TGH providers.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 3. Licensing
Chapter 62. Therapeutic Group Homes
Subchapter A. General Provisions
§6203. Definitions

Active Treatment—implementation of a professionally developed and supervised comprehensive treatment plan that is developed no later than seven days after admission and designed to achieve the client's discharge from inpatient status within the shortest practicable time. To be considered active treatment, the services must contribute to the achievement of the goals listed in the comprehensive treatment plan. Tutoring, attending school, and transportation are not considered *active treatment*. Recreational activities can be considered active treatment when such activities are community based, structured and integrated within the surrounding community.

* * *

Therapeutic Group Home (TGH)—a facility that provides community-based residential services to clients under the age of 21 in a home-like setting of no greater than 10 beds under the supervision and oversight of a psychiatrist or psychologist.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:402 (February 2012), amended LR 40:0000 (October 2014).

Subchapter B. Licensing
§6213. Changes in Licensee Information or Personnel

A. - C.1. ...

2. A TGH that is under provisional licensure, license revocation, or denial of license renewal may not undergo a CHOW.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:405 (February 2012), amended LR 40:

§6219. Licensing Surveys

A. - D. ...

E. If deficiencies have been cited during a licensing survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. ...
2. directed plans of correction;
3. provisional licensure;
4. denial of renewal; and/or
5. license revocations.

F. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:406 (February 2012), amended LR 40:

§6221. Complaint Surveys

A. - J.1. ...

a. The offer of the administrative appeal, if appropriate, as determined by the Health Standards Section, shall be included in the notification letter of the results of the informal reconsideration results. The right to administrative appeal shall only be deemed appropriate and thereby afforded upon completion of the informal reconsideration.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 40:

§6223. Statement of Deficiencies

A. - C.1. ...

2. The written request for informal reconsideration of the deficiencies shall be submitted to the Health Standards Section and will be considered timely if received by HSS within 10 calendar days of the provider's receipt of the statement of deficiencies.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 40:

§6225. Cessation of Business

A. Except as provided in §6295 of this Chapter, a license shall be immediately null and void if a TGH ceases to operate.

1. - 3. Repealed.

B. A cessation of business is deemed to be effective the date on which the TGH stopped offering or providing services to the community.

C. Upon the cessation of business, the provider shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the provider. The provider does not have a right to appeal a cessation of business.

E. Prior to the effective date of the closure or cessation of business, the TGH shall:

1. give 30 days' advance written notice to:
   a. HSS;
   b. the prescribing physician; and
   c. the parent(s) or legal guardian or legal representative of each client; and
2. provide for an orderly discharge and transition of all of the clients in the facility.

F. In addition to the advance notice of voluntary closure, the TGH shall submit a written plan for the disposition of client medical records for approval by the department. The plan shall include the following:

1. the effective date of the voluntary closure;
2. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's clients' medical records;
3. an appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the client or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction; and

4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 days prior to the effective date of closure.

G. If a TGH fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating, or owning a TGH for a period of two years.

H. Once the TGH has ceased doing business, the TGH shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:407 (February 2012), amended LR 40:

§6227. Denial of License, Revocation of License, or Denial of License Renewal

A. - C.3. ...

D. Revocation of License or Denial of License Renewal. A TGH license may be revoked or may be denied renewal for any of the following reasons, including but not limited to:

1. - 15. ...

16. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

17. failure to timely pay outstanding fees, fines, sanctions, or other debts owed to the department; or

18. failure to maintain accreditation, or for a new TGH that has applied for accreditation, the failure to obtain accreditation.

19. Repealed.

E. If a TGH license is revoked or renewal is denied or the license is surrendered in lieu of an adverse action, any owner, officer, member, director, manager, or administrator of such TGH may be prohibited from opening, managing, directing, operating, or owning another TGH for a period of two years from the date of the final disposition of the revocation, denial action, or surrender.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:408 (February 2012), amended LR 40:

§6229. Notice and Appeal of License Denial, License Revocation, License Non-Renewal, and Appeal of Provisional License

A. - B. ...

1. The TGH provider shall request the informal reconsideration within 15 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration must be in writing and shall be forwarded to the Health Standards Section.

B.2. - D. ...

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal, or license revocation, the DAL or its successor shall conduct the hearing pursuant to the Louisiana Administrative Procedure Act.

E.1. - G.2. ...

3. The provider shall request the informal reconsideration in writing, which shall be received by the HSS within five days of receipt of the notice of the results of the follow-up survey from the department.

a. Repealed.

4. The provider shall request the administrative appeal within 15 days of receipt of the notice of the results of the follow-up survey from the department. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law, or its successor.

a. Repealed.

H. - H.1. ...

I. If a timely administrative appeal has been filed by a provider with a provisional initial license that has expired or by an existing provider whose provisional license has expired under the provisions of this Chapter, the DAL or its successor shall conduct the hearing pursuant to the Louisiana Administrative Procedure Act.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:409 (February 2012), amended LR 40:

Subchapter D. Provider Responsibilities

§6247. Staffing Requirements

A. - C.2. ...

3. A ratio of not less than one staff to five clients is maintained at all times; however, two staff must be on duty at all times with at least one being direct care staff when there is a client present.

D. - D.3. ...

4. Therapist. Each therapist shall be available at least three hours per week for individual and group therapy and two hours per month for family therapy.

5. Direct Care Staff. The ratio of direct care staff to clients served shall be 1:5 with a minimum of two staff on duty per shift for a 10 bed capacity. This ratio may need to be increased based on the assessed level of acuity of the youth or if treatment interventions are delivered in the community and offsite.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:413 (February 2012), amended LR 40:

§6249. Personnel Qualifications and Responsibilities

A. - 1.a.ii.(c). ...

b. A supervising practitioner's responsibilities shall include, but are not limited to:

i. reviewing the referral PTA and completing an initial diagnostic assessment at admission or within 72 hours of admission and prior to service delivery;

ii. - iv. ...

v. at least every 28 days or more often as necessary, providing:

1.b.v.(a). - 6.b.viii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:414 (February 2012), amended LR 40:

Subchapter F. Services

§6267. Comprehensive Treatment Plan

A. Within seven days of admission, a comprehensive treatment plan shall be developed by the established multidisciplinary team of staff providing services for the client. Each treatment team member shall sign and indicate their attendance and involvement in the treatment team meeting. The treatment team review shall be directed and supervised by the supervising practitioner at a minimum of every 28 days.

B. - G.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:418 (February 2012), amended LR 40:

§6269. Client Services

A. - A.4. ...

B. The TGH is required to provide at least 16 hours of active treatment per week to each client. This treatment shall be provided and/or monitored by qualified staff.

C. The TGH shall have a written plan for insuring that a range of daily indoor and outdoor recreational and leisure opportunities are provided for clients. Such opportunities shall be based on both the individual interests and needs of the client and the composition of the living group.

C.1. - G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:419 (February 2012), amended LR 40:

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 Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821. Ms. Castello 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.

Kathy H. Kliebert
Secretary

1410#070

DECLARATION OF EMERGENCY

Department of Natural Resources
Office of Conservation

Statewide Orders No. 29-B and 29-B-a
(LAC 43:XIX.Chapters 2 and 11)

Order extending the deadline of drilling and completion operational and safety requirements for wells drilled in search or for the production of oil or natural gas at water locations.

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly title 30 of the Revised Statutes of 1950, as amended, and in conformity with the provisions of the Louisiana Administrative Procedure Act, title 49, sections 953(B)(1) and (2), 954(B)(2), as amended, the following Emergency Rule and reasons therefore are now adopted and promulgated by the commissioner of conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by extending the effectiveness of the Emergency Rule this Rule supersedes the previous Emergency Rule for drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. The following Emergency Rule provides for commissioner of conservation approved exceptions to equipment requirements on workover operations. Furthermore, the extension of the rule allows more time to complete comprehensive rule amendments.

A. Need and Purpose for Emergency Rule

In light of the Gulf of Mexico Deepwater Horizon oil spill incident in federal waters approximately 50 miles off Louisiana's coast and the threat posed to the natural resources of the state, and the economic livelihood and property of the citizens of the state caused thereby, the Office of Conservation began a review of its current drilling and completion operational and safety requirements for wells drilled in search of oil and natural gas at water locations. While the incidents of blowout of Louisiana wells is minimal, occurring at less than three-tenths of one percent of the wells drilled in Louisiana since 1987, the great risk posed by blowouts at water locations to the public health, safety and welfare of the people of the State, as well as the environment generally, necessitated the rule amendments contained herein.

After implementation of the Emergency Rule, conservation formed an ad hoc committee to further study comprehensive rulemaking in order to promulgate new permanent regulations which ensure increased operational and safety requirements for the drilling or completion of oil and gas wells at water locations within the state. Based upon the work of this ad hoc committee, draft proposed rules that would replace these emergency rules are being created for the consideration and comment by interested parties. This

draft proposed Rule was published in the Potpourri section of the *Louisiana Register* on July 20, 2012. Rule promulgation is expected to continue with revised draft rules being published as a Notice of Intent within the next 60 days.

B. Synopsis of Emergency Rule

The Emergency Rule set forth hereinafter is intended to provide greater protection to the public health, safety and welfare of the people of the state, as well as the environment generally by extending the effectiveness of new operational and safety requirements for the drilling and completion of oil and gas wells at water locations. Following the Gulf of Mexico-Deepwater Horizon oil spill, the Office of Conservation ("conservation") investigated the possible expansion of Statewide Orders No. 29-B and 29-B-a requirements relating to well control at water locations. As part of the rule expansion project, Conservation reviewed the well control regulations of the U.S. Department of the Interior's mineral management service or MMS (now named the Bureau of Safety and Environmental Enforcement). Except in the instances where it was determined that the MMS provisions were repetitive of other provisions already being incorporated, were duplicative of existing conservation regulations or were not applicable to the situations encountered in Louisiana's waters, all provisions of the MMS regulations concerning well control issues at water locations were adopted by the preceding Emergency Rule, which this Rule supersedes, integrated into conservation's Statewide Orders No. 29-B and 29-B-a.

Conservation is currently performing a comprehensive review of its regulations as it considers future amendments to its operational rules and regulations found in Statewide Order No. 29-B and elsewhere. Specifically, the Emergency Rule extends the effectiveness of a new Chapter within Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) to provide additional rules concerning the drilling and completion of oil and gas wells at water locations, specifically providing for the following: rig movement and reporting requirements, additional requirements for applications to drill, casing program requirements, mandatory diverter systems and blowout preventer requirements, oil and gas well-workover operations, diesel engine safety requirements, and drilling fluid regulations. Further, the Emergency Rule amends Statewide Order No. 29-B-a (LAC 43:XIX.Chapter 11) to provide for and expand upon rules concerning the required use of storm chokes in oil and gas wells at water locations.

C. Reasons

Recognizing the potential advantages of expanding the operational and safety requirements for the drilling and completion of oil and gas wells at water locations within the state, it has been determined that failure to establish such requirements in the form of an administrative rule may lead to the existence of an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally. By this Rule conservation extends the effectiveness of the following requirements until such time as final comprehensive rules may be promulgated.

Protection of the public and our environment therefore requires the commissioner of conservation to extend the following rules in order to assure that drilling and completion of oil and gas wells at water locations within the state are undertaken in accordance with all reasonable care and protection to the health, safety of the public, oil and gas personnel and the environment generally. The Emergency Rule, amendment to Statewide Order No. 29-B (LAC 43:XIX.Chapter 2) and Statewide Order No. 29-B-a (LAC 43:XIXChapter 11) ("Emergency Rule") set forth hereinafter are adopted and extended by the Office of Conservation.

D. Effective Date and Duration

1. The effective date for this Emergency Rule shall be September 19, 2014. This Emergency Rule is a continuation of the June 27, 2014 Emergency Rule.

2. The Emergency Rule herein adopted as a part thereof, shall remain effective for a period of not less than 120 days hereafter, or until the adoption of the final version of an amendment to Statewide Order No. 29-B and Statewide Order No. 29-B-a as noted herein, whichever occurs first.

The Emergency Rule signed by the commissioner on June 27, 2014 is hereby rescinded and replaced by the following Emergency Rule.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 2. Additional Requirements for Water Locations

§201. Applicability

A. In addition to the requirements set forth in Chapter 1 of this Subpart, all oil and gas wells being drilled or completed at a water location within the state and which are spud or on which workover operations commence on or after July 15, 2010 shall comply with this Chapter.

B. Unless otherwise stated herein, nothing within this Chapter shall alter the obligation of oil and gas operators to meet the requirements of Chapter 1 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§203. Application to Drill

In addition to the requirements set forth in §103 of this Subpart, at the time of submittal of an application for permit to drill, the applicant will provide an electronic copy on a disk of the associated drilling rig's spill prevention control (SPC) plan that is required by DEQ pursuant to the provisions of Part IX of Title 33 of the *Louisiana Administrative Code* or any successor rule. Such plan shall become a part of the official well file. If the drilling rig to be used in drilling a permitted well changes between the date of the application and the date of drilling, the applicant shall provide an electronic copy on a disk of the SPC plan for the correct drilling rig within two business days of becoming aware of the change in rigs; but in no case shall the updated SPC plan be submitted after spudding of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§204. Rig Movement and Reporting

A. The operator must report the movement of all drilling and workover rig units on and off locations to the appropriate district manager with the rig name, well serial number and expected time of arrival and departure.

B. Drilling operations on a platform with producing wells or other hydrocarbon flow must comply with the following.

1. An emergency shutdown station must be installed near the driller's console.

2. All producible wells located in the affected wellbay must be shut in below the surface and at the wellhead when:

a. a rig or related equipment is moved on and off a platform. This includes rigging up and rigging down activities within 500 feet of the affected platform;

b. a drilling unit is moved or skid between wells on a platform;

c. a mobile offshore drilling unit (MODU) moves within 500 feet of a platform.

3. Production may be resumed once the MODU is in place, secured, and ready to begin drilling operations.

C. The movement of rigs and related equipment on and off a platform or from well to well on the same platform, including rigging up and rigging down, shall be conducted in a safe manner. All wells in the same well-bay which are capable of producing hydrocarbons shall be shut in below the surface with a pump-through-type tubing plug and at the surface with a closed master valve prior to moving well-completion rigs and related equipment, unless otherwise approved by the district manager. A closed surface-controlled subsurface safety valve of the pump-through type may be used in lieu of the pump-through-type tubing plug, provided that the surface control has been locked out of operation. The well from which the rig or related equipment is to be moved shall also be equipped with a back-pressure valve prior to removing the blowout preventer (BOP) system and installing the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§205. Casing Program

A. General Requirements

1. The operator shall case and cement all wells with a sufficient number of strings of casing and quantity and quality of cement in a manner necessary to prevent fluid migration in the wellbore, protect the underground source of drinking water (USDW) from contamination, support unconsolidated sediments, and otherwise provide a means of control of the formation pressures and fluids.

2. The operator shall install casing necessary to withstand collapse, bursting, tensile, and other stresses that may be encountered and the well shall be cemented in a manner which will anchor and support the casing. Safety factors in casing program design shall be of sufficient magnitude to provide optimum well control while drilling and to assure safe operations for the life of the well.

3. All tubulars and cement shall meet or exceed API standards. Cementing jobs shall be designed so that cement composition, placement techniques, and waiting times ensure that the cement placed behind the bottom 500 feet of casing attains a minimum compressive strength of 500 psi before drilling out of the casing or before commencing completion operations.

4. Centralizers

a. Surface casing shall be centralized by means of placing centralizers in the following manner.

i. A centralizer shall be placed on every third joint from the shoe to surface, with two centralizers being placed on each of the lowermost three joints of casing.

ii. If conductor pipe is set, three centralizers shall be equally spaced on surface casing to fall within the conductor pipe.

b. Intermediate and production casing, and drilling and production liners shall be centralized by means of a centralizer placed every third joint from the shoe to top of cement. Additionally, two centralizers shall be placed on each of the lowermost three joints of casing.

c. All centralizers shall meet API standards.

5. A copy of the documentation furnished by the manufacturer, if new, or supplier, if reconditioned, which certifies tubular condition, shall be provided with the well history and work resume report (Form WH-1).

B. Conductor Pipe. A conductor pipe is that pipe ordinarily used for the purpose of supporting unconsolidated surface deposits. A conductor pipe shall be used during the drilling of any oil and gas well and shall be set at depth that allows use of a diverter system.

C. Surface Casing

1. Where no danger of pollution of the USDW exists, the minimum amount of surface or first-intermediate casing to be set shall be determined from Table 1 hereof, except that in no case shall less surface casing be set than an amount needed to protect the USDW unless an alternative method of USDW protection is approved by the district manager.

Table 1

Total Depth of Contact	Casing Required	Surface Casing Test Pressure (lbs. per sq. in.)
0-2500	100	300
2500-3000	150	600
3000-4000	300	600
4000-5000	400	600
5000-6000	500	750
6000-7000	800	1000
7000-8000	1000	1000
8000-9000	1400	1000
9000-Deeper	1800	1000

a. In known low-pressure areas, exceptions to the above may be granted by the commissioner or his agent. If, however, in the opinion of the commissioner, or his agent, the above regulations shall be found inadequate, and additional or lesser amount of surface casing and/or test pressure shall be required for the purpose of safety and the protection of the USDW.

2. Surface casing shall be cemented with a sufficient volume of cement to insure cement returns to the surface.

3. Surface casing shall be tested before drilling the plug by applying a minimum pump pressure as set forth in Table 1 after at least 200 feet of the mud-laden fluid has been displaced with water at the top of the column. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of test pressure as outlined in Table 1, the operator shall be required to take such corrective measures as will

insure that such surface casing will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure. The provisions of Paragraph E.7 below, for the producing casing, shall also apply to the surface casing.

4. Cement shall be allowed to stand a minimum of 12 hours under pressure before initiating test or drilling plug. Under pressure is complied with if one float valve is used or if pressure is held otherwise.

D. Intermediate Casing/Drilling Liner

1. Intermediate casing is that casing used as protection against caving of heaving formations or when other means are not adequate for the purpose of segregating upper oil, gas or water-bearing strata. Intermediate casing/drilling liner shall be set when required by abnormal pressure or other well conditions.

2. If an intermediate casing string is deemed necessary by the district manager for the prevention of underground waste, such regulations pertaining to a minimum setting depth, quality of casing, and cementing and testing of sand, shall be determined by the Office of Conservation after due hearing. The provisions of Paragraph E.7 below, for the producing casing, shall also apply to the intermediate casing.

3. Intermediate casing/drilling liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as an intermediate string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The drilling liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. Before drilling the plug in the intermediate string of casing, the casing shall be tested by pump pressure, as determined from Table 2 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

Table 2. Intermediate Casing and Liner

Depth Set	Test Pressure (lbs. per sq. in.)
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. If the test is unsatisfactory, the operator shall not proceed with the drilling of the well until a satisfactory test has been obtained.

E. Producing String

1. Producing string, production casing or production liner is that casing used for the purpose of segregating the horizon from which production is obtained and affording a means of communication between such horizons and the surface.

2. The producing string of casing shall consist of new or reconditioned casing, tested at mill test pressure or as otherwise designated by the Office of Conservation.

3. Cement shall be by the pump-and-plug method, or another method approved by the Office of Conservation. Production casing/production liner shall be at minimum, cemented in such a manner, at least 500 feet above all known hydrocarbon bearing formations to insure isolation and, if applicable, all abnormal pressure formations are isolated from normal pressure formations, but in no case shall less cement be used than the amount necessary to fill the casing/liner annulus to a point 500 feet above the shoe or the top of the liner whichever is less. If a liner is used as a producing string, the cement shall be tested by a fluid entry test (-0.5 ppg EMW) to determine whether a seal between the liner top and next larger casing string has been achieved, and the liner-lap point must be at least 300 feet above the previous casing shoe. The production liner (and liner-lap) shall be tested to a pressure at least equal to the anticipated pressure to which the liner will be subjected to during the formation-integrity test below that liner shoe, or subsequent liner shoes if set. Testing shall be in accordance with Subsection G below.

4. The amount of cement to be left remaining in the casing, until the requirements of Paragraph 5 below have been met, shall be not less than 20 feet. This shall be accomplished through the use of a float-collar, or other approved or practicable means, unless a full-hole cementer, or its equivalent, is used.

5. Cement shall be allowed to stand a minimum of 12 hours under pressure and a minimum total of 24 hours before initiating pressure test in the producing or oil string. Under pressure is complied with if one or more float valves are employed and are shown to be holding the cement in place, or when other means of holding pressure is used. When an operator elects to perforate and squeeze or to cement around the shoe, he may proceed with such work after 12 hours have elapsed after placing the first cement.

6. Before drilling the plug in the producing string of casing, the casing shall be tested by pump pressure, as determined from Table 3 hereof, after 200 feet of mud-laden fluid in the casing has been displaced by water at the top of the column.

Table 3. Producing String	
Depth Set	Test Pressure (lbs. per sq. in.)
2000-3000'	800
3000-6000'	1000
6000-9000'	1200
9000-and deeper	1500

a. If at the end of 30 minutes the pressure gauge shows a drop of 10 percent of the test pressure or more, the operator shall be required to take such corrective measures as will insure that the producing string of casing is so set and cemented that it will hold said pressure for 30 minutes without a drop of more than 10 percent of the test pressure on the gauge.

7. If the commissioner's agent is not present at the time designated by the operator for inspection of the casing tests of the producing string, the operator shall have such tests witnessed, preferably by an offset operator. An affidavit of test, on the form prescribed by the district office, signed by the operator and witness, shall be furnished to the district office showing that the test conformed satisfactorily to the above mentioned regulations before proceeding with the completion. If test is satisfactory, normal operations may be resumed immediately.

8. If the test is unsatisfactory, the operator shall not proceed with the completion of the well until a satisfactory test has been obtained.

F. Cement Evaluation

1. Cement evaluation tests (cement bond or temperature survey) shall be conducted for all casing and liners installed below surface casing to assure compliance with LAC 43:XIX.205.D.3 and E.3.

2. Remedial cementing operations that are required to achieve compliance with LAC 43:XIX.205.D.3 and E.3 shall be conducted following receipt of an approved work permit from the district manager for the proposed operations.

3. Cementing and wireline records demonstrating the presence of the required cement tops shall be retained by the operator for a period of two years.

G. Leak-off Tests

1. A pressure integrity test must be conducted below the surface casing or liner and all intermediate casings or liners. The district manager may require a pressure-integrity test at the conductor casing shoe if warranted by local geologic conditions or the planned casing setting depth. Each pressure integrity test must be conducted after drilling at least 10 feet but no more than 50 feet of new hole below the casing shoe and must be tested to either the formation leak-off pressure or to the anticipated equivalent drilling fluid weight at the setting depth of the next casing string.

a. The pressure integrity test and related hole-behavior observations, such as pore-pressure test results, gas-cut drilling fluid, and well kicks must be used to adjust the drilling fluid program and the setting depth of the next casing string. All test results must be recorded and hole-behavior observations made during the course of drilling related to formation integrity and pore pressure in the driller's report.

b. While drilling, a safe drilling margin must be maintained. When this safe margin cannot be maintained, drilling operations must be suspended until the situation is remedied.

H. Prolonged Drilling Operations

1. If wellbore operations continue for more than 30 days within a casing string run to the surface:

a. drilling operations must be stopped as soon as practicable, and the effects of the prolonged operations on continued drilling operations and the life of the well evaluated. At a minimum, the operator shall:

i. caliper or pressure test the casing; and

ii. report evaluation results to the district manager and obtain approval of those results before resuming operations;

b. if casing integrity as determined by the evaluation has deteriorated to a level below minimum safety factors, the casing must be repaired or another casing string run. Approval from the district manager shall be obtained prior to any casing repair activity.

I. Tubing and Completion

1. Well-completion operations means the work conducted to establish the production of a well after the production-casing string has been set, cemented, and pressure-tested.

2. Prior to engaging in well-completion operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review by the Office of Conservation.

3. When well-completion operations are conducted on a platform where there are other hydrocarbon-producing wells or other hydrocarbon flow, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station.

4. No tubing string shall be placed in service or continue to be used unless such tubing string has the necessary strength and pressure integrity and is otherwise suitable for its intended use.

5. A valve, or its equivalent, tested to a pressure of not less than the calculated bottomhole pressure of the well, shall be installed below any and all tubing outlet connections.

6. When a well develops a casing pressure, upon completion, equivalent to more than three-quarters of the internal pressure that will develop the minimum yield point of the casing, such well shall be required by the district manager to be killed, and a tubing packer to be set so as to keep such excessive pressure off of the casing.

7. Wellhead Connections. Wellhead connections shall be tested prior to installation at a pressure indicated by the district manager in conformance with conditions existing in areas in which they are used. Whenever such tests are made in the field, they shall be witnessed by an agent of the Office of Conservation. Tubing and tubingheads shall be free from obstructions in wells used for bottomhole pressure test purposes.

8. When the tree is installed, the wellhead shall be equipped so that all annuli can be monitored for sustained pressure. If sustained casing pressure is observed on a well, the operator shall immediately notify the district manager.

9. Wellhead, tree, and related equipment shall have a pressure rating greater than the shut-in tubing pressure and

shall be designed, installed, used, maintained, and tested so as to achieve and maintain pressure control. New wells completed as flowing or gas-lift wells shall be equipped with a minimum of one master valve and one surface safety valve, installed above the master valve, in the vertical run of the tree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§207. Diverter Systems and Blowout Preventers

A. Diverter System. A diverter system shall be required when drilling surface hole in areas where drilling hazards are known or anticipated to exist. The district manager may, at his discretion, require the use of a diverter system on any well. In cases where it is required, a diverter system consisting of a diverter sealing element, diverter lines, and control systems must be designed, installed, used, maintained, and tested to ensure proper diversion of gases, water, drilling fluids, and other materials away from facilities and personnel. The diverter system shall be designed to incorporate the following elements and characteristics:

1. dual diverter lines arranged to provide for maximum diversion capability;

2. at least two diverter control stations. One station shall be on the drilling floor. The other station shall be in a readily accessible location away from the drilling floor;

3. remote-controlled valves in the diverter lines. All valves in the diverter system shall be full-opening. Installation of manual or butterfly valves in any part of the diverter system is prohibited;

4. minimize the number of turns in the diverter lines, maximize the radius of curvature of turns, and minimize or eliminate all right angles and sharp turns;

5. anchor and support systems to prevent whipping and vibration;

6. rigid piping for diverter lines. The use of flexible hoses with integral end couplings in lieu of rigid piping for diverter lines shall be approved by the district manager.

B. Diverter Testing Requirements

1. When the diverter system is installed, the diverter components including the sealing element, diverter valves, control systems, stations and vent lines shall be function and pressure tested.

2. For drilling operations with a surface wellhead configuration, the system shall be function tested at least once every 24-hour period after the initial test.

3. After nippling-up on conductor casing, the diverter sealing element and diverter valves are to be pressure tested to a minimum of 200 psig. Subsequent pressure tests are to be conducted within seven days after the previous test.

4. Function tests and pressure tests shall be alternated between control stations.

5. Recordkeeping Requirements

a. Pressure and function tests are to be recorded in the driller's report and certified (signed and dated) by the operator's representative.

b. The control station used during a function or pressure test is to be recorded in the driller's report.

c. Problems or irregularities during the tests are to be recorded along with actions taken to remedy same in the driller's report.

d. All reports pertaining to diverter function and/or pressure tests are to be retained for inspection at the wellsite for the duration of drilling operations.

C. BOP Systems. The operator shall specify and insure that contractors design, install, use, maintain and test the BOP system to ensure well control during drilling, workover and all other appropriate operations. The surface BOP stack shall be installed before drilling below surface casing.

1. BOP system components for drilling activity located over a body of water shall be designed and utilized, as necessary, to control the well under all potential conditions that might occur during the operations being conducted and at minimum, shall include the following components:

a. annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. two sets of hydraulically-operated pipe rams.

2. Drilling activity with a tapered drill string shall require the installation of two or more sets of conventional or variable-bore pipe rams in the BOP stack to provide, at minimum, two sets of rams capable of sealing around the larger-size drill string and one set of pipe rams capable of sealing around the smaller-size drill string.

3. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

4. All connections used in the surface BOP system must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

5. The commissioner of conservation, following a public hearing, may grant exceptions to the requirements of LAC 43:XIX.207.C-J.

D. BOP Working Pressure. The working pressure rating of any BOP component, excluding annular-type preventers, shall exceed the maximum anticipated surface pressure (MASP) to which it may be subjected.

E. BOP Auxiliary Equipment. All BOP systems shall be equipped and provided with the following.

1. A hydraulically actuated accumulator system which shall provide 1.5 times volume of fluid capacity to close and hold closed all BOP components, with a minimum pressure of 200 psig above the pre-charge pressure without assistance from a charging system.

2. A backup to the primary accumulator-charging system, supplied by a power source independent from the power source to the primary, which shall be sufficient to close all BOP components and hold them closed.

3. Accumulator regulators supplied by rig air without a secondary source of pneumatic supply shall be equipped with manual overrides or other devices to ensure capability of hydraulic operation if the rig air is lost.

4. At least one operable remote BOP control station in addition to the one on the drilling floor. This control station shall be in a readily accessible location away from the drilling floor. If a BOP control station does not perform properly, operations shall be suspended until that station is operable.

5. A drilling spool with side outlets, if side outlets are not provided in the body of the BOP stack, to provide for separate kill and choke lines.

6. A kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. The choke line shall be installed above the bottom ram. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore.

7. A valve installed below the swivel (upper kelly cock), essentially full-opening, and a similar valve installed at the bottom of the kelly (lower kelly cock). An operator must be able to strip the lower kelly cock through the BOP stack. A wrench to fit each valve shall be stored in a location readily accessible to the drilling crew. If drilling with a mud motor and utilizing drill pipe in lieu of a kelly, you must install one kelly valve above, and one strippable kelly valve below the joint of pipe used in place of a kelly. On a top-drive system equipped with a remote-controlled valve, you must install a strippable kelly-type valve below the remote-controlled valve.

8. An essentially full-opening drill-string safety valve in the open position on the rig floor shall be available at all times while drilling operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the drill string. A wrench to fit the drill-string safety valve shall be stored in a location readily accessible to the drilling crew.

9. A safety valve shall be available on the rig floor assembled with the proper connection to fit the casing string being run in the hole.

10. Locking devices installed on the ram-type preventers.

F. BOP Maintenance and Testing Requirements

1. The BOP system shall be visually inspected on a daily basis.

2. Pressure tests (low and high pressure) of the BOP system are to be conducted at the following times and intervals:

a. during a shop test prior to transport of the BOPs to the drilling location. Shop tests are not required for equipment that is transported directly from one well location to another;

b. immediately following installation of the BOPs;

c. within 14 days of the previous BOP pressure test, alternating between control stations and at a staggered interval to allow each crew to operate the equipment. If either control system is not functional, further operations shall be suspended until the nonfunctional, system is operable. Exceptions may be granted by the district manager in cases where a trip is scheduled to occur within 2 days after the 14-day testing deadline;

d. before drilling out each string of casing or liner (The district manager may require that a conservation enforcement specialist witness the test prior to drilling out each casing string or liner.);

e. not more than 48 hours before a well is drilled to a depth that is within 1000 feet of a hydrogen sulfide zone (The district manager may require that a conservation enforcement specialist witness the test prior to drilling to a depth that is within 1000 feet of a hydrogen sulfide zone.);

f. when the BOP tests are postponed due to well control problem(s), the BOP test is to be performed on the first trip out of the hole, and reasons for postponing the testing are to be recorded in the driller's report.

3. Low pressure tests (200-300 psig) of the BOP system (choke manifold, kelly valves, drill-string safety valves, etc.) are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2. in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Variable bore pipe rams are to be tested against the largest and smallest sizes of pipe in use, excluding drill collars and bottom hole assembly.

c. Bonnet seals are to be tested before running the casing when casing rams are installed in the BOP stack.

4. High pressure tests of the BOP system are to be performed at the times and intervals specified in LAC 43:XIX.207.F.2 in accordance with the following provisions.

a. Test pressures are to be held for a minimum of five minutes.

b. Ram-type BOP's, choke manifolds, and associated equipment are to be tested to the rated working pressure of the equipment or 500 psi greater than the calculated MASP for the applicable section of the hole.

c. Annular-type BOPs are to be tested to 70 percent of the rated working pressure of the equipment.

5. The annular and ram-type BOPs with the exception of the blind-shear rams are to be function tested every seven days between pressure tests. All BOP test records should be certified (signed and dated) by the operator's representative.

a. Blind-shear rams are to be tested at all casing points and at an interval not to exceed 30 days.

6. If the BOP equipment does not hold the required pressure during a test, the problem must be remedied and a retest of the affected component(s) performed. Additional BOP testing requirements:

a. use water to test the surface bop system;

b. if a control station is not functional operations shall be suspended until that station is operable;

c. test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly.

G. BOP Record Keeping. The time, date and results of pressure tests, function tests, and inspections of the BOP system are to be recorded in the driller's report. All pressure tests shall be recorded on an analog chart or digital recorder. All documents are to be retained for inspection at the wellsite for the duration of drilling operations and are to be retained in the operator's files for a period of two years.

H. BOP Well Control Drills. Weekly well control drills with each drilling crew are to be conducted during a period of activity that minimizes the risk to drilling operations. The drills must cover a range of drilling operations, including drilling with a diverter (if applicable), on-bottom drilling, and tripping. Each drill must be recorded in the driller's

report and is to include the time required to close the BOP system, as well as, the total time to complete the entire drill.

I. Well Control Safety Training. In order to ensure that all drilling personnel understand and can properly perform their duties prior to drilling wells which are subject to the jurisdiction of the Office of Conservation, the operator shall require that contract drilling companies provide and/or implement the following:

1. periodic training for drilling contractor employees which ensures that employees maintain an understanding of, and competency in, well control practices;

2. procedures to verify adequate retention of the knowledge and skills that the contract drilling employees need to perform their assigned well control duties.

J. Well Control Operations

1. The operator must take necessary precautions to keep wells under control at all times and must:

a. use the best available and safest drilling technology to monitor and evaluate well conditions and to minimize the potential for the well to flow or kick;

b. have a person onsite during drilling operations who represents the operators interests and can fulfill the operators responsibilities;

c. ensure that the tool pusher, operator's representative, or a member of the drilling crew maintains continuous surveillance on the rig floor from the beginning of drilling operations until the well is completed or abandoned, unless you have secured the well with blowout preventers (BOPs), bridge plugs, cement plugs, or packers;

d. use and maintain equipment and materials necessary to ensure the safety and protection of personnel, equipment, natural resources, and the environment.

2. Whenever drilling operations are interrupted, a downhole safety device must be installed, such as a cement plug, bridge plug, or packer. The device must be installed at an appropriate depth within a properly cemented casing string or liner.

a. Among the events that may cause interruption to drilling operations are:

i. evacuation of the drilling crew;

ii. inability to keep the drilling rig on location; or

iii. repair to major drilling or well-control equipment.

3. If the diverter or BOP stack is nippled down while waiting on cement, it must be determined, before nippling down, when it will be safe to do so based on knowledge of formation conditions, cement composition, effects of nippling down, presence of potential drilling hazards, well conditions during drilling, cementing, and post cementing, as well as past experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§209. Casing-Heads

A. All wells shall be equipped with casing-heads with a test pressure in conformance with conditions existing in areas in which they are used. Casing-head body, as soon as installed shall be equipped with proper connections and valves accessible to the surface. Reconditioning shall be required on any well showing pressure on the casing-head, or leaking gas or oil between the oil string and next larger size casing string, when, in the opinion of the district managers, such pressure or leakage assume hazardous proportions or indicate the existence of underground waste. Mud-laden fluid may be pumped between any two strings of casing at the top of the hole, but no cement shall be used except by special permission of the commissioner or his agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§211. Oil and Gas Well-Workover Operations

A. Definitions. When used in this Section, the following terms shall have the meanings given below.

Expected Surface Pressure—the highest pressure predicted to be exerted upon the surface of a well. In calculating *expected surface pressure*, reservoir pressure as well as applied surface pressure must be considered.

Routine Operations—any of the following operations conducted on a well with the tree installed including cutting paraffin, removing and setting pump-through-type tubing plugs, gas-lift valves, and subsurface safety valves which can be removed by wireline operations, bailing sand, pressure surveys, swabbing, scale or corrosion treatment, caliper and gauge surveys, corrosion inhibitor treatment, removing or replacing subsurface pumps, through-tubing logging, wireline fishing, and setting and retrieving other subsurface flow-control devices.

Workover Operations—the work conducted on wells after the initial completion for the purpose of maintaining or restoring the productivity of a well.

B. When well-workover operations are conducted on a well with the tree removed, an emergency shutdown system (ESD) manually controlled station shall be installed near the driller's console or well-servicing unit operator's work station, except when there is no other hydrocarbon-producing well or other hydrocarbon flow on the platform.

C. Prior to engaging in well-workover operations, crew members shall be instructed in the safety requirements of the operations to be performed, possible hazards to be encountered, and general safety considerations to protect personnel, equipment, and the environment. Date and time of safety meetings shall be recorded and available for review.

D. Well-control fluids, equipment, and operations. The following requirements apply during all well-workover operations with the tree removed.

1. The minimum BOP-system components when the expected surface pressure is less than or equal to 5,000 psi shall include one annular-type well control component, one set of pipe rams, and one set of blind-shear rams. The shear ram component of this requirement shall be effective for any workover operations initiated on or after January 1, 2011 and not before.

2. The minimum BOP-system components when the expected surface pressure is greater than 5,000 psi shall include one annular-type well control component, two sets of pipe rams, and one set of blind-shear rams. The shear ram component of this requirement shall be effective for any workover operations initiated on or after January 1, 2011 and not before.

3. BOP auxillary equipment in accordance with the requirements of LAC 43:XIX.207.E.

4. When coming out of the hole with drill pipe or a workover string, the annulus shall be filled with well-control fluid before the change in such fluid level decreases the hydrostatic pressure 75 pounds per square inch (psi) or every five stands of drill pipe or workover string, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and the equivalent well-control fluid volume shall be calculated and posted near the operator's station. A mechanical, volumetric, or electronic device for measuring the amount of well-control fluid required to fill the hold shall be utilized.

5. The following well-control-fluid equipment shall be installed, maintained, and utilized:

a. a fill-up line above the uppermost BOP;

b. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

c. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

E. The minimum BOP-system components for well-workover operations with the tree in place and performed through the wellhead inside of conventional tubing using small-diameter jointed pipe (usually 3/4 inch to 1 1/4 inch) as a work string, i.e., small-tubing operations, shall include two sets of pipe rams, and one set of blind rams.

1. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

F. For coiled tubing operations with the production tree in place, you must meet the following minimum requirements for the BOP system.

1. BOP system components must be in the following order from the top down when expected surface pressures are less than or equal to 3,500 psi:

a. stripper or annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. kill line inlet;

e. hydraulically operated two-way slip rams;

f. hydraulically operated pipe rams.

2. BOP system components must be in the following order from the top down when expected surface pressures are greater than 3,500 psi:

a. stripper or annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. kill line inlet;

e. hydraulically-operated two-way slip rams;

f. hydraulically-operated pipe rams;

g. hydraulically-operated blind-shear rams. These rams should be located as close to the tree as practical.

3. BOP system components must be in the following order from the top down for wells with returns taken through an outlet on the BOP stack:

a. stripper or annular-type well control component;

b. hydraulically-operated blind rams;

c. hydraulically-operated shear rams;

d. kill line inlet;

e. hydraulically-operated two-way slip rams;

f. hydraulically-operated pipe rams;

g. a flow tee or cross;

h. hydraulically-operated pipe rams;

i. hydraulically-operated blind-shear rams on wells with surface pressures less than or equal to 3,500 psi. As an option, the pipe rams can be placed below the blind-shear rams. The blind-shear rams should be placed as close to the tree as practical.

4. A set of hydraulically-operated combination rams may be used for the blind rams and shear rams.

5. A set of hydraulically-operated combination rams may be used for the hydraulic two-way slip rams and the hydraulically-operated pipe rams.

6. A dual check valve assembly must be attached to the coiled tubing connector at the downhole end of the coiled tubing string for all coiled tubing well-workover operations. To conduct operations without a downhole check valve, it must be approved by the district manager.

7. A kill line and a separate choke line are required. Each line must be equipped with two full-opening valves and at least one of the valves must be remotely controlled. A manual valve must be used instead of the remotely controlled valve on the kill line if a check valve is installed between the two full-opening manual valves and the pump or manifold. The valves must have a working pressure rating equal to or greater than the working pressure rating of the connection to which they are attached, and must be installed between the well control stack and the choke or kill line. For operations with expected surface pressures greater than 3,500 psi, the kill line must be connected to a pump or manifold. The kill line inlet on the BOP stack must not be used for taking fluid returns from the wellbore.

8. The hydraulic-actuating system must provide sufficient accumulator capacity to close-open-close each component in the BOP stack. This cycle must be completed with at least 200 psi above the pre-charge pressure without assistance from a charging system.

9. All connections used in the surface BOP system from the tree to the uppermost required ram must be flanged, including the connections between the well control stack and the first full-opening valve on the choke line and the kill line.

10. The coiled tubing connector must be tested to a low pressure of 200 to 300 psi, followed by a high pressure test to the rated working pressure of the connector or the expected surface pressure, whichever is less. The dual check valves must be successfully pressure tested to the rated working pressure of the connector, the rated working pressure of the dual check valve, expected surface pressure, or the collapse pressure of the coiled tubing, whichever is less.

G. The minimum BOP-system components for well-workover operations with the tree in place and performed by moving tubing or drill pipe in or out of a well under pressure utilizing equipment specifically designed for that purpose, i.e., snubbing operations, shall include the following:

1. one set of pipe rams hydraulically operated; and

2. two sets of stripper-type pipe rams hydraulically operated with spacer spool.

H. Test pressures must be recorded during BOP and coiled tubing tests on a pressure chart, or with a digital recorder, unless otherwise approved by the district manager. The test interval for each BOP system component must be 5 minutes, except for coiled tubing operations, which must include a 10 minute high-pressure test for the coiled tubing string.

I. Wireline Operations. The operator shall comply with the following requirements during routine, as defined in Subsection A of this Section, and nonroutine wireline workover operations.

1. Wireline operations shall be conducted so as to minimize leakage of well fluids. Any leakage that does occur shall be contained to prevent pollution.

2. All wireline perforating operations and all other wireline operations where communication exists between the completed hydrocarbon-bearing zone(s) and the wellbore shall use a lubricator assembly containing at least one wireline valve.

3. When the lubricator is initially installed on the well, it shall be successfully pressure tested to the expected shut-in surface pressure.

J. Following completion of the well-workover activity, all such records shall be retained by the operator for a period of two years.

K. An essentially full-opening work-string safety valve in the open position on the rig floor shall be available at all times while well-workover operations are being conducted. This valve shall be maintained on the rig floor to fit all connections that are in the work string. A wrench to fit the work-string safety valve shall be stored in a location readily accessible to the workover crew.

L. The commissioner may grant an exception to any provisions of this section that require specific equipment upon proof of good cause. For consideration of an exception, the operator must show proof of the unavailability of properly sized equipment and demonstrate that anticipated surface pressures minimize the potential for a loss of well control during the proposed operations. All exception requests must be made in writing to the commissioner and include documentation of any available evidence supporting the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§213. Diesel Engine Safety Requirements

A. On or after January 1, 2011, each diesel engine with an air take device must be equipped to shut down the diesel engine in the event of a runaway.

1. A diesel engine that is not continuously manned, must be equipped with an automatic shutdown device.

2. A diesel engine that is continuously manned, may be equipped with either an automatic or remote manual air intake shutdown device.

3. A diesel engine does not have to be equipped with an air intake device if it meets one of the following criteria:

a. starts a larger engine;

b. powers a firewater pump;

c. powers an emergency generator;

d. powers a bop accumulator system;

e. provides air supply to divers or confined entry personnel;

f. powers temporary equipment on a nonproducing platform;

g. powers an escape capsule; or

h. powers a portable single-cylinder rig washer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§215. Drilling Fluids

A. The inspectors and engineers of the Office of Conservation shall have access to the mud records of any drilling well, except those records which pertain to special muds and special work with respect to patentable rights, and shall be allowed to conduct any essential test or tests on the mud used in the drilling of a well. When the conditions and tests indicate a need for a change in the mud or drilling fluid program in order to insure proper control of the well, the district manager shall require the operator or company to use due diligence in correcting any objectionable conditions.

B. Well-control fluids, equipment, and operations shall be designed, utilized, maintained, and/or tested as necessary to control the well in foreseeable conditions and circumstances.

C. The well shall be continuously monitored during all operations and shall not be left unattended at any time unless the well is shut in and secured.

D. The following well-control-fluid equipment shall be installed, maintained, and utilized:

1. a fill-up line above the uppermost BOP;

2. a well-control, fluid-volume measuring device for determining fluid volumes when filling the hole on trips; and

3. a recording mud-pit-level indicator to determine mud-pit-volume gains and losses. This indicator shall include both a visual and an audible warning device.

E. Safe Practices

1. Before starting out of the hole with drill pipe, the drilling fluid must be properly conditioned. A volume of drilling fluid equal to the annular volume must be circulated with the drill pipe just off-bottom. This practice may be omitted if documentation in the driller's report shows:

a. no indication of formation fluid influx before starting to pull the drill pipe from the hole;

b. the weight of returning drilling fluid is within 0.2 pounds per gallon of the drilling fluid entering the hole.

2. Record each time drilling fluid is circulated in the hole in the driller’s report.

3. When coming out of the hole with drill pipe, the annulus must be filled with drilling fluid before the hydrostatic pressure decreases by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. The number of stands of drill pipe and drill collars that may be pulled must be calculated before the hole is filled. Both sets of numbers must be posted near the driller's station. A mechanical, volumetric, or electronic device must be used to measure the drilling fluid required to fill the hole.

4. Controlled rates must be used to run and pull drill pipe and downhole tools so as not to swab or surge the well.

5. When there is an indication of swabbing or influx of formation fluids, appropriate measures must be taken to control the well. Circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom.

6. The maximum pressures must be calculated and posted near the driller's console that you may safely contain under a shut-in BOP for each casing string. The pressures posted must consider the surface pressure at which the formation at the shoe would break down, the rated working pressure of the BOP stack, and 70 percent of casing burst (or casing test as approved by the district manager). As a minimum, you must post the following two pressures:

a. the surface pressure at which the shoe would break down. This calculation must consider the current drilling fluid weight in the hole; and

b. the lesser of the BOP's rated working pressure or 70 percent of casing-burst pressure (or casing test otherwise approved by the district manager).

7. An operable drilling fluid-gas separator and degasser must be installed before you begin drilling operations. This equipment must be maintained throughout the drilling of the well.

8. The test fluids in the hole must be circulated or reverse circulated before pulling drill-stem test tools from the hole. If circulating out test fluids is not feasible, with an appropriate kill weight fluid test fluids may be bullhead out of the drill-stem test string and tools.

9. When circulating, the drilling fluid must be tested at least once each work shift or more frequently if conditions warrant. The tests must conform to industry-accepted practices and include density, viscosity, and gel strength; hydrogen ion concentration; filtration; and any other tests the district manager requires for monitoring and maintaining drilling fluid quality, prevention of downhole equipment problems and for kick detection. The test results must be recorded in the drilling fluid report.

F. Monitoring Drilling Fluids

1. Once drilling fluid returns are established, the following drilling fluid-system monitoring equipment must be installed throughout subsequent drilling operations. This equipment must have the following indicators on the rig floor:

a. pit level indicator to determine drilling fluid-pit volume gains and losses. This indicator must include both a visual and an audible warning device;

b. volume measuring device to accurately determine drilling fluid volumes required to fill the hole on trips;

c. return indicator devices that indicate the relationship between drilling fluid-return flow rate and pump discharge rate. This indicator must include both a visual and an audible warning device; and

d. gas-detecting equipment to monitor the drilling fluid returns. The indicator may be located in the drilling fluid-logging compartment or on the rig floor. If the indicators are only in the logging compartment, you must continually man the equipment and have a means of immediate communication with the rig floor. If the indicators are on the rig floor only, an audible alarm must be installed.

G. Drilling Fluid Quantities

1. Quantities of drilling fluid and drilling fluid materials must be maintained and replenished at the drill site as necessary to ensure well control. These quantities must be determined based on known or anticipated drilling conditions, rig storage capacity, weather conditions, and estimated time for delivery.

2. The daily inventories of drilling fluid and drilling fluid materials must be recorded, including weight materials and additives in the drilling fluid report.

3. If there are not sufficient quantities of drilling fluid and drilling fluid material to maintain well control, the drilling operations must be suspended.

H. Drilling Fluid-Handling Areas

1. Drilling fluid-handling areas must be classified according to API RP 500, recommended practice for classification of locations for electrical installations at petroleum facilities, classified as class I, division 1 and division 2 or API RP 505, recommended practice for classification of locations for electrical installations at petroleum facilities, classified as class 1, zone 0, zone 1, and zone 2. In areas where dangerous concentrations of combustible gas may accumulate. A ventilation system and gas monitors must be installed and maintained. Drilling fluid-handling areas must have the following safety equipment:

a. a ventilation system capable of replacing the air once every 5 minutes or 1.0 cubic feet of air-volume flow per minute, per square foot of area, whichever is greater. In addition:

i. if natural means provide adequate ventilation, then a mechanical ventilation system is not necessary;

ii. if a mechanical system does not run continuously, then it must activate when gas detectors indicate the presence of 1 percent or more of combustible gas by volume; and

iii. if discharges from a mechanical ventilation system may be hazardous, the drilling fluid-handling area must be maintained at a negative pressure. The negative pressure area must be protected by using at least one of the following: a pressure-sensitive alarm, open-door alarms on each access to the area, automatic door-closing devices, air locks, or other devices approved by the district manager;

b. gas detectors and alarms except in open areas where adequate ventilation is provided by natural means. Gas detectors must be tested and recalibrated quarterly. No more than 90 days may elapse between tests;

c. explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where air is used for pressuring equipment, the air intake must be located outside of and as far as practicable from hazardous areas; and

d. alarms that activate when the mechanical ventilation system fails.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

Subpart 4. Statewide Order No. 29-B-a

Chapter 11. Required Use of Storm Chokes

§1101. Scope

A. Order establishing rules and regulations concerning the required use of storm chokes to prevent blowouts or uncontrolled flow in the case of damage to surface equipment.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended

and promulgated by the Department of Natural Resources, Office of Conservation, LR 20:1127 (October 1994), LR 40:

§1103. Applicability

A. All wells capable of flow with a surface pressure in excess of 100 pounds, falling within the following categories, shall be equipped with storm chokes:

1. any locations inaccessible during periods of storm and/or floods, including spillways;

2. located in bodies of water being actively navigated;

3. located in wildlife refuges and/or game preserves;

4. located within 660 feet of railroads, ship channels, and other actively navigated bodies of water;

5. located within 660 feet of state and federal highways in southeast Louisiana, in that area east of a north-south line drawn through New Iberia and south of an east-west line through Opelousas;

6. located within 660 feet of state and federal highways in northeast Louisiana, in that area bounded on the west by the Ouachita River, on the north by the Arkansas-Louisiana line, on the east by the Mississippi River, and on the south by the Black and Red Rivers;

7. located within 660 feet of the following highways:

a. U.S. Highway 71 between Alexandria and Krotz Springs;

b. U.S. Highway 190 between Opelousas and Krotz Springs;

c. U.S. Highway 90 between Lake Charles and the Sabine River;

8. located within the corporate limits of any city, town, village, or other municipality.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 15, 1946, amended March 1, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 40:

§1104. General Requirements for Storm Choke Use at Water Locations

A. This Section only applies to oil and gas wells at water locations.

B. A subsurface safety valve (SSSV) shall be designed, installed, used, maintained, and tested to ensure reliable operation.

1. The device shall be installed at a depth of 100 feet or more below the seafloor within 2 days after production is established.

2. Until a SSSV is installed, the well shall be attended in the immediate vicinity so that emergency actions may be taken while the well is open to flow. During testing and inspection procedures, the well shall not be left unattended while open to production unless a properly operating subsurface-safety device has been installed in the well.

3. The well shall not be open to flow while the SSSV is removed, except when flowing of the well is necessary for a particular operation such as cutting paraffin, bailing sand, or similar operations.

4. All SSSV's must be inspected, installed, used, maintained, and tested in accordance with American Petroleum Institute recommended practice 14B, recommended practice for design, installation, repair, and operation of subsurface safety valve systems.

C. Temporary Removal for Routine Operations

1. Each wireline or pumpdown-retrievable SSSV may be removed, without further authorization or notice, for a routine operation which does not require the approval of Form DM-4R.

2. The well shall be identified by a sign on the wellhead stating that the SSSV has been removed. If the master valve is open, a trained person shall be in the immediate vicinity of the well to attend the well so that emergency actions may be taken, if necessary.

3. A platform well shall be monitored, but a person need not remain in the well-bay area continuously if the master valve is closed. If the well is on a satellite structure, it must be attended or a pump-through plug installed in the tubing at least 100 feet below the mud line and the master valve closed, unless otherwise approved by the district manager.

4. Each operator shall maintain records indicating the date a SSSV is removed, the reason for its removal, and the date it is reinstalled.

D. Emergency Action. In the event of an emergency, such as an impending storm, any well not equipped with a subsurface safety device and which is capable of natural flow shall have the device properly installed as soon as possible with due consideration being given to personnel safety.

E. Design and Operation

1. All SSSVs must be inspected, installed, maintained, and tested in accordance with API RP 14B, recommended practice for design, installation, repair, and operation of subsurface safety valve systems.

2. Testing requirements. Each SSSV installed in a well shall be removed, inspected, and repaired or adjusted, as necessary, and reinstalled or replaced at intervals not exceeding 6 months for those valves not installed in a landing nipple and 12 months for those valves installed in a landing nipple.

3. Records must be retained for a period of 2 years for each safety device installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 40:

§1105. Waivers

A. Onshore Wells. Where the use of storm chokes would unduly interfere with normal operation of a well, the district manager may, upon submission of pertinent data, in writing, waive the requirements of this order.

B. Offshore Wells

1. The district manager, upon submission of pertinent data, in writing explaining the efforts made to overcome the particular difficulties encountered, may waive the use of a subsurface safety valve under the following circumstances, and may, in his discretion, require in lieu thereof a surface safety valve:

a. where sand is produced to such an extent or in such a manner as to tend to plug the tubing or make inoperative the subsurface safety valve;

b. when the flowing pressure of the well is in excess of 100 psi but is inadequate to activate the subsurface safety valve;

c. where flow rate fluctuations or water production difficulties are so severe that the subsurface safety valve would prevent the well from producing at its allowable rate;

d. where mechanical well conditions do not permit the installation of a subsurface safety valve;

e. in such other cases as the district manager may deem necessary to grant an exception.

AUTHORITY NOTE: Promulgated in accordance with Act 157 of the Legislature of 1940.

HISTORICAL NOTE: Adopted by the Department of Conservation, March 1, 1961, amended March 15, 1961, amended and promulgated by Department of Natural Resources, Office of Conservation, LR 20:1128 (October 1994), LR 40:

James H. Welsh
Commissioner

1410#013

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections
Office of Motor Vehicles

Driving Schools (LAC 55:III.151)

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 provided in R.S. 49:953(B), requiring employees of driving schools in direct care or responsibility for minor students to submit and pass a background check, Current regulation only provides for instructors and owners supervising students to submit to and pass a background check. It is necessary to adopt these emergency rules to have this order in place until the corresponding permanent rules can be adopted in order to enforce the Child Protection 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 take effect September 20, 2014, and shall be in effect for the maximum period allowed under the Act (120 days) 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
§151. Regulations for All Driver Education Providers

A. - E.4. …

5. Any employee of a driving school with direct care or responsibility for minor students or who has access to the student's personal information, shall submit to and successfully pass a background check prior to any contact with minor students. The direct care or responsibility over minor students shall consist of any contact with a minor student, including, but not limited to, picking up students for instruction, monitoring students, or driving students home. This rule applies to all driving school employees, including instructors, owners and administrative staff. Employees of driving schools who are not required to submit to a background check or have not passed a background check shall not be allowed access to minor students or their information. Driving school owners shall be required to submit a list of all employees with direct care or responsibility for minor students to DPS annually, and any time a new employee is hired, by email at ladrivingschools@dps.la.gov. Personal information includes, but is not limited to, any identifying information such as name, address, telephone number, social security number, parents' names, name and address of high school attended by student, and emergency contacts.

E.6. - H.10. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 40:1461 and R.S. 40:1462.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1977 (August 2012), amended LR 40:

Jill P. Boudreaux
Undersecretary

1410#005

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Modification of 2014-15 Commercial Fishing Season for Lake Bruin, False River Lake and Lake Providence

The commercial fishing seasons for Lake Bruin (Tensas Parish), False River Lake (Pointe Coupee Parish), and Lake Providence (East Carroll Parish) have previously been set to open at sunrise on November 1, 2014. Additionally, False River Lake is currently undergoing a drawdown and LAC 76:VII.175 provides that all freshwater impoundments shall be closed to use of commercial fish netting during water drawdown periods, unless otherwise specified by the department.

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, and R.S. 56:22 and R.S. 56:326.3, which provide that the Wildlife and Fisheries Commission may set seasons for freshwater finfish, the secretary hereby declares:

The 2014-15 commercial fishing seasons in Lake Bruin (Tensas Parish), False River Lake (Pointe Coupee Parish), and Lake Providence (East Carroll Parish) will open at sunrise on October 1, 2014 and remain open until sunset on the last day of February, 2015. Further, the Department of Wildlife and Fisheries finds no biological or technical reason to prohibit the commercial netting of fish in False River Lake during the ongoing drawdown of that impoundment and hereby specifies that the prohibition in LAC 76:VII.175 shall not apply.

This Declaration of Emergency shall become effective at sunrise on October 1, 2014 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until rescinded by the secretary.

Robert Barham
Secretary

1410#033

Rules

RULE

Tuition Trust Authority
Office of Student Financial Assistance

START Saving Program (LAC 28:VI.315)

The Louisiana Tuition Trust Authority has amended its START Saving Program rules (R.S. 17:3091 et seq.). (ST14153NI)

Title 28
EDUCATION
Part VI. Student Financial Assistance—Higher Education Savings
Chapter 3. Education Savings Account
§315. Miscellaneous Provisions

A. - B.28. …

29. For the year ending December 31, 2013, the Louisiana Education Tuition and Savings Fund earned an interest rate of 2.168 percent.

30. For the year ending December 31, 2013, the Savings Enhancement Fund earned an interest rate of 1.715 percent.

C. - S.2. …

AUTHORITY NOTE: Promulgated in accordance with 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 35:1492 (August 2009), LR 36:492 (March 2010), LR 36:2030 (September 2010), LR 38:1954 (August 2012), LR 39:2238 (August 2013), LR 40:1926 (October 2014).

George Badge Eldredge
General Counsel

1410#007

RULE

Department of Environmental Quality
Office of the Secretary
Legal Division

Licenses for Irradiators and Well Logging; Compatibility Changes; Transportation Notifications; and Technical Corrections (LAC 33:XV.102, 325, 326, 331, 550, 1519, 1599, 1731 and 1733)(RP057ft)

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 has amended the Radiation Protection regulations, LAC 33:XV.102, 325, 326, 331, 550, 1519, 1599, 1731 and 1733 (Log #RP057ft).

This Rule is identical to federal regulations found in 10 C.F.R. 30, 31, 34, 36, 39, 40 and 71, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule is promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule makes minor changes to the requirements for specific licenses for irradiators and well logging. It addresses changes in two sections from compatibility category B to compatibility category C. This Rule changes notification requirements to Indian tribes regarding shipment of certain types of nuclear waste. It also makes technical corrections to four sections. This Rule updates the state regulations to be compatible with changes in the federal regulations. The changes in the state regulations are category B, C. and H and S requirements for the state of Louisiana to remain an NRC agreement state. The basis and rationale for this Rule are to mirror the federal regulations and maintain an adequate agreement state program. 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 XV. Radiation Protection
Chapter 1. General Provisions
§102. Definitions and Abbreviations

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain Chapter may be found in that Chapter.

* * *

Indian Tribe—an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

* * *

Tribal Official—the highest ranking individual that represents tribal leadership, such as the chief, president, or tribal council leadership.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of

Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:283 (February 2014), LR 40:1338 (July 2014), LR 40:1926 (October 2014).

Chapter 3. Licensing of Radioactive Material

Subchapter D. Specific Licenses

§325. General Requirements for the Issuance of Specific Licenses

A. Upon a determination that an application meets the requirements of these regulations, the department shall issue a specific license authorizing the possession and use of byproduct material. A license application will be approved if the department determines that:

1. the applicant is qualified by training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to protect health and minimize danger to life or property;

2. the applicant's proposed equipment, facilities, and procedures are adequate to protect health and minimize danger to life or property;

3. the application is for a purpose authorized by these regulations;

4. the applicant satisfies any applicable special requirements contained in LAC 33:XV.326, 327, 328, Chapters 5, 7, 13, 17, or 20; and

B. - D.8.d.iv. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 23:1140 (September 1997), LR 24:2091 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1017 (May 2000), LR 26:2568 (November 2000), LR 27:1227 (August 2001), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2178 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:1927 (October 2014).

§326. Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material

A. …

1. the applicant shall satisfy the general requirements specified in LAC 33:XV.325.A.1-4 and the requirements contained in this Part;

2. - 2.e. …

3. the application shall include an outline of the written operating and emergency procedures listed in LAC 33:XV.1737 that describes the radiation safety aspects of the procedures;

4. …

5. the application shall include a description of the access control systems required by LAC 33:XV.1715, the radiation monitors required by LAC 33:XV.1721, the method of detecting leaking sources required by LAC 33:XV.1743, including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors;

6. if the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for performing leak testing and submit a description of these procedures to the department. The description shall include the:

a. methods of performing the analysis;

b. pertinent experience of the individual who analyzes the samples; and

c. instruments to be used;

7. …

8. the applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by LAC 33:XV.1745.

B. …

C. Specific Licenses for Well Logging. The department will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements.

1. The applicant shall satisfy the general requirements specified in LAC 33:XV.325.A for byproduct material, and any special requirements contained in this Part.

2. The applicant shall develop a program for training logging supervisors and logging assistants, and submit to the department a description of this program which specifies the:

a. initial training;

b. on-the-job training;

c. annual safety reviews provided by the licensee;

d. means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

e. means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

3. The applicant shall submit to the department written operating and emergency procedures as described in LAC 33:XV.2021, or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

4. The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure that the department's regulations, license requirements, and the applicant's operating and emergency procedures are followed. Inspection records shall be retained for three years after each annual internal inspection.

5. The applicant shall submit to the department a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

6. If an applicant performs leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits used. If the applicant analyzes its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the department. The description shall include the:

a. instruments to be used;

b. methods of performing the analysis; and

c. pertinent experience of the person who will analyze the wipe samples.

D. - E.1.k. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 27:1228 (August 2001), LR 30:1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:45 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2525 (October 2005), LR 33:2178 (October 2007), LR 34:1027 (June 2008), amended by the Office of the Secretary, Legal Division, LR 40:1927 (October 2014).

§331. Specific Terms and Conditions of Licenses

A. - E.1. …

2. an entity (as that term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

3. an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2571 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2527 (October 2005), LR 33:2180 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014).

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

Subchapter A. Equipment Control

§550. Performance Requirements for Radiography Equipment

A. …

1. each radiographic exposure device and all associated equipment shall meet the requirements specified in American National Standard (ANSI) N432-1980 Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography, (published as *NBS Handbook 136*, issued January 1981). This publication has been approved for incorporation by reference by the director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This publication may be purchased from the American National Standards Institute, Inc., 25 West 43rd Street, New York, New York 10036; telephone: (212) 642-4900. Copies of the document are available for inspection at the Nuclear Regulatory Commission Library, 11545 Rockville Pike, Rockville, Maryland 20852. A copy of the document is also on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030. Engineering analyses may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the department may find this an acceptable alternative to actual testing of the component in accordance with the referenced standard;

2. - 5. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:554 (June 1995), LR 23:1138 (September 1997), LR 24:2100 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2583 (November 2000), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014).

Chapter 15. Transportation of Radioactive Material

§1519. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste [Formerly §1516]

A. As specified in Subsections B, C, and D of this Section, each licensee shall provide advance notification to the governor, or to the governor's designee, of the shipment of licensed material, within or across the boundary of Louisiana, before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage. A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the *Federal Register* on June 30, 1995 (60 FR 34306). The list of governor's designees and tribal official's designees of participating tribes will be published annually in the *Federal Register* on or about June 30 to reflect any changes in the information. The list of the names and mailing addresses of the governors' designees and tribal official's designees of participating tribes is also available on request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. In Louisiana, the governor's designee is the Louisiana State Police, 7919 Independence Boulevard, Box 66614 (#A2621), Baton Rouge, LA 70896-6614.

1. As specified in Subsections B, C, and D of this Section, after June 11, 2013, each licensee shall provide advance notification to the *tribal official* as defined in LAC 33:XV.102 of participating tribes referenced in Subsection A of this Section, or the official's designee, of the shipment of licensed material, within or across the boundary of the tribe's reservation, before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant, or other place of use or storage.

B. - C. …

1. The notification shall be made in writing to the office of each appropriate governor or to the governor's designee, the office of each appropriate tribal official or tribal official's designee, and to the department.

2. …

3. A notification delivered by any means other than mail shall reach the office of the governor or the governor's designee or the tribal official or tribal official's designee at least four days before the beginning of the seven-day period during which departure of the shipment is estimated to occur.

C.4. - D.3. …

4. the seven-day period during which arrival of the shipment at the boundary of the state or tribal reservation is estimated to occur;

5. - 6. …

E. A licensee who finds that schedule information previously furnished to the governor or to the governor's designee or a tribal official or tribal official's designee, in accordance with this Section, will not be met shall telephone a responsible individual in the office of the governor or of the governor's designee or the tribal official or tribal official's designee and inform that individual of the extent of the delay beyond the schedule originally reported. The licensee shall maintain a record of the name of the individual contacted for three years.

F. Each licensee who cancels a nuclear waste shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified, each tribal official or to the tribal official's designee previously notified, and to the department. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled. The licensee shall retain a copy of the notice as a record for three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2190 (October 2007), LR 34:2111 (October 2008), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014).

§1599. Appendix—Incorporation by Reference of 10 CFR Part 71, Appendix A, Tables A-1, A-2, A-3, and A-4; Procedures for Determining A_1 and A_2 [Formerly §1517]

A. Tables A-1, A-2, A-3, and A-4 in 10 CFR Part 71, Appendix A, July 6, 2012, are hereby incorporated by reference. These tables are used to determine the values of A_1 and A_2, as described in Subsections B-F of this Section.

B. - F. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104(B) and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:604 (April 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 34:2114 (October 2008), LR 35:1110 (June 2009), LR 36:2275 (October 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:1929 (October 2014).

Chapter 17. Licensing and Radiation Safety Requirements for Irradiators

§1731. Design Requirements

A. - F. …

G. Access Control. For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system shall meet the requirements of LAC 33:XV.1715.

H. - L. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2116 (November 1998), amended by the Office of the Secretary, Legal Division, LR 40:1929 (October 2014).

§1733. Construction Monitoring and Acceptance Testing

A. - E. …

F. Source Rack. For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing shall include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements in LAC 33:XV.1727 are met for protection of the source rack and the mechanism that moves the rack; testing shall include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves that rack from moving product carriers.

G. - L. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 24:2116 (November 1998), amended by the Office of the Secretary, Legal Division, LR 40:1929 (October 2014).

Herman Robinson, CPM
Executive Counsel

1410#028

RULE

Department of Health and Hospitals
Behavior Analyst Board

Application Procedures and Board Fees
(LAC 46:VIII.Chapter 3)

Act 351 of the 2013 Legislative Session created the Louisiana Behavior Analyst Board. Act 351 mandates licensure of behavior analysts, state certification of assistant behavior analysts and registration of line technicians performing applied behavior analysis services in Louisiana. In accordance with R.S. 49:95 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Behavior Analyst Board has adopted a new Rule, LAC 46:VIII.Chapter 3, Application Procedures and Board Fees. This Rule provides a procedure to collect applications for the licensure of behavior analysts, certification of assistant behavior analysts and registration of line technicians. This Rule also requires licensing and administrative fees for regulation under the Behavior Analyst Board.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part VIII. Behavior Analysts
Chapter 3. Application Procedures and Board Fees
§301. Application Procedures for Licensure/State Certification/Registration

A. Application and/or Registration

1. An application for a license as a behavior analyst, state certified assistant behavior analyst or registration as a line technician may be submitted after the requirements in R.S. 37:3706-37:3708 are met.

2. Upon submission of application or registration on the forms provided by the board, accompanied by such fee determined by the board, the applicant must attest and acknowledge that the:

a. information provided to the board is true, correct and complete to the best of his knowledge and belief; and

b. the board reserves the right to deny an application in accordance with R.S. 37:3706-R.S. 37:3708, if the application or any application materials submitted for consideration contain misrepresentations or falsifications.

3. An applicant, who is denied licensure based on the information submitted to the board, may reapply to the board after one year, and having completed additional training, if necessary and having met the requirements of law as defined in the rules and regulations adopted by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706-R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1930 (October 2014).

§302. Licensure of Behavior Analysts

A. The applicant for licensure as a behavior analyst shall:

1. submit notarized application along with appropriate fee pursuant to Section 305;

2. provide proof of a masters degree by requesting official transcripts from accredited university;

3. submit verification of successful passage of a national exam administered by a nonprofit organization accredited by the National Commission for Certifying Agencies and the American National Standards Institute to credential professional practitioners of behavior analysis related to the principles and practice of the profession of behavior analysis that is approved by the board;

4. take and successfully pass the Louisiana jurisprudence exam issued by the board;

5. complete a criminal background check as approved by the board; and

6. provide proof of good moral character as approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1930 (October 2014).

§303. Certification of State Certified Assistant Behavior Analysts

A. The applicant for certification as a state certified assistant behavior analyst should:

1. submit notarized application along with appropriate fee pursuant to Section 305;

2. provide proof of a bachelors degree by requesting official transcripts from accredited university;

3. submit verification of successful passage of a national exam administered by a nonprofit organization accredited by the National Commission for Certifying Agencies and the American National Standards Institute to credential professional practitioners of behavior analysis related to the principles and practice of the profession of behavior analysis that is approved by the board;

4. take and successfully pass the Louisiana jurisprudence exam issued by the board;

5. complete a criminal background check approved by the board;

6. provide proof of good moral character as approved by the board; and

7. provide proof of supervision by a Louisiana licensed behavior analyst on the form required by the board. If there is more than one supervisor, a form must be submitted for each supervisor.

B. If the supervision relationship between a Louisiana licensed behavior analyst and state certified assistant behavior analyst ends, both parties are responsible for notifying the board in writing, within 10 calendar days of the termination of the arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3707.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1930 (October 2014).

§304. Registration of Line Technicians

A. A Louisiana licensed behavior analyst must register with the board all line technicians functioning under their authority and direction. It is the responsibility of both the licensed behavior analyst and line technician to submit registration paperwork for each supervisory relationship. The registration must be completed on the form provided by the board along with payment of the appropriate fee pursuant to Section 305.

B. A line technician must complete a criminal background check approved by the board.

C. If the supervision relationship between a Louisiana licensed behavior analyst and line technician ends, both parties are responsible for notifying the board in writing, within 10 calendar days of the termination of the arrangement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1930 (October 2014).

§305. Licensing and Administrative Fees

A. Licensing Fees

Licensing and Administrative Fees	
Application for Licensed Behavior Analyst	$400
Application for State Certified Assistant Behavior Analyst	$250
Registration for Line Technicians	$ 50
Temporary Licensure	$125
Annual Renewal - Behavior Analyst	$400
Annual Renewal - Assistant Behavior Analyst	$250
Annual Renewal - Line Technicians	$ 50

Licensing and Administrative Fees	
Jurisprudence Examination	$ 75
Criminal Background Check	$ 50

B. Administrative Fees

Administrative Fees	
Late fees	$50
Duplicate copy of license	$15
Official Name Change on License	$25
License Verification	$15
Insufficient Check Fee	$15
Copies of documents	$2/page

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3714.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1930 (October 2014).

Kelly Parker
Executive Director

1410#001

RULE

Department of Health and Hospitals
Behavior Analyst Board

Disciplinary Action (LAC 46:VIII.Chapter 6)

In accordance with R.S. 49:95 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Behavior Analyst Board is adopting a new Rule, LAC 46:VIII.Chapter 6, Rules for Disciplinary Action. This Rule provides a procedure to collect complaints, conduct investigations and disciplinary hearings for those licensed, certified and registered with the Behavior Analyst Board.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part VIII. Behavior Analysts
Chapter 6. Rules for Disciplinary Action

§601. Applicability; Confidentiality

A. These rules shall be applicable to any action of the Louisiana Behavior Analyst Board to withhold, deny, revoke or suspend any behavior analysts license on any of the grounds set forth in R.S. 37:3704 or under any other applicable law, regulation or rule, when such action arises from a complaint as defined in this Section.

B. Unless otherwise provided by law, the board may delegate its authority and responsibility under these rules to a committee of one or more board members, to a hearing officer, or to other persons.

C. A complaint remains confidential and may only be released to the public if the licensee is found guilty of a violation of a provision of the agreement or subsequent violation of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1931 (October 2014).

§602. Complaints

A. A complaint is defined as the receipt of any information by the board indicating that there may be grounds for disciplinary action against a behavior analyst, or any other individual working under a behavior analyst's legal functioning authority, under the provisions of 37:3712, or other applicable law, regulation or rule.

B. Upon receipt of a complaint, the board may initiate and take such action, as it deems appropriate.

C. Complaints may be initiated by any person or by the board on its own initiative.

D. Upon receipt of complaints from other persons, the board will make available the required investigation form(s) to said person(s). Ordinarily, the board will not take additional action until the form is satisfactorily completed.

1. Except under unusual circumstances, the board will take no action on anonymous complaints.

2. If the information furnished in the request for investigation form is not sufficient, the board may request additional information before further considering the complaint.

E. The investigation form(s) shall be addressed confidential to the complaints committee of the board and sent to the board office.

F. All complaints received shall be assigned a sequentially ordered complaint number, which shall be utilized in all official references.

G. The board's complaints coordinator shall determine whether the complaint warrants further investigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704 and R.S. 37:3712.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1931 (October 2014).

§603. Investigation

A. If the complaint's coordinator determines that a complaint warrants further investigation, the board's complaint's coordinator shall notify the licensee or applicant against whom the complaint has been made (hereinafter referred to as "respondent") by certified mail. The notice to the respondent shall include the following:

1. notice that a complaint has been filed;

2. a statement of the nature of the complaint;

3. a reference to the particular sections of the statutes, rules or ethical standards that may be involved;

4. copies of the applicable laws, rules and regulations of the board; and

5. a request for cooperation in obtaining a full understanding of the circumstances.

B. The respondent shall provide the board, within 30 days, a written statement giving the respondent's view of the circumstances, which are the subject of the complaint. If the respondent refuses to reply to the board's inquiry or cooperate with the board, the board shall continue its investigation.

C. The board may conduct such other investigation, as it deems appropriate.

D. During the investigation phase, the board may communicate with the complainant and with the respondent in an effort to seek a resolution of the complaint satisfactory to the board without the necessity of a formal hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704 and R.S. 37:3712.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1931 (October 2014).

§604. Formal Hearing

A. The purpose of a formal hearing is to determine contested issues of law and fact; whether the person did certain acts or omissions and, if he/she did, whether those acts or omissions violated the Louisiana Behavior Analyst Licensing Act, the rules and regulations of the board, the code of ethics of the behavior analysts, or prior final decisions and/or consent orders involving the licensed behavior analyst or applicant for licensure and to determine the appropriate disciplinary action.

B. If, after completion of its investigation, the board determines that the circumstances may warrant the withholding, denial, revocation or suspension of a behavior analyst's license or assistant's certificate, the board shall initiate a formal hearing.

C. The formal hearing shall be conducted in accordance with the adjudication procedures set forth in the Louisiana Administrative Procedure Act.

D. Upon completion of the adjudication hearing procedures set forth in the Louisiana Administrative Procedure Act, the board shall take such action, as it deems appropriate on the record of the proceeding. Disciplinary action under R.S. 37:3712 requires the affirmative vote of at least four of the members of the board.

E. The form of the decision and order, application for rehearing and judicial review shall be governed by the provisions of the Louisiana Administrative Procedure Act.

F. The board shall have the authority at anytime to determine that a formal hearing should be initiated immediately on any complaint. The complaint and investigation procedures set forth above shall not create any due process rights for a respondent who shall be entitled only to the due process provided under the Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704 and R.S.37:3712.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1932 (October 2014).

§605. Withdrawal of a Complaint

A. If the complainant wishes to withdraw the complaint, the inquiry is terminated, except in cases where the board's complaints coordinator judges the issues to be of such importance as to warrant completing the investigation in its own right and in the interest of public safety and welfare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704 and R.S. 37:3712.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1932 (October 2014).

Kelly Parker
Executive Director

1410#003

RULE

Department of Health and Hospitals
Behavior Analyst Board

License Renewal Requirements
(LAC 46:VIII.Chapter 4)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Health and Hospitals, Behavior Analyst Board is adopting a new Rule, LAC 46:VIII.Chapter 4, Renewal Requirements. This Rule provides a procedure for licensees, certificants and registrants to renew their license, certificate or registration annually in accordance with Act 351 beginning December 2014.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part VIII. Behavior Analysts
Chapter 4. License, Certification and Registration Renewal Process

§401. Renewal Process

A. A licensed behavior analyst shall renew their current license every year by December 31 beginning in December 2014. The renewal period shall open in October and will close December 31 annually. The licensed behavior analyst must submit the required renewal forms, renewal fee and proof of fulfillment of all continuing education requirements as approved by the board.

B. A state certified assistant behavior analyst shall renew their current license every year by December 31 beginning in December 2014. The renewal period shall open in October and will close December 31 annually. The state certified assistant behavior analyst must submit the required renewal forms, renewal fee and proof of fulfillment of all continuing education requirements as approved by the board.

C. A licensed behavior analyst shall renew the registration of all registered line technicians under their supervision every year by December 31 beginning December 2014. The renewal period shall open in October and will close December 31 annually. The licensed behavior analyst in conjunction with the registered line technicians must complete the proper renewal forms accompanied with the renewal fee as determined by the board.

D. A license, certificate or registration may be valid for one year beginning January 1 through December 31 for each renewal period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3709.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1932 (October 2014).

§402. Noncompliance—Renewal Process

A. Noncompliance shall include, in part, incomplete forms, unsigned forms, failure to file all of the required renewal forms by December 31, failure to postmark the renewal package by December 31 and failure to report a sufficient number of acceptable continuing education credits as determined by the board.

B. If the license, certificate or registration is not renewed by the end of December, due notice having been given, the license, certificate, or registration shall be regarded as lapsed effective January 1. An individual shall not practice applied behavior analysis in Louisiana while the license is lapsed.

C. A lapsed license, certificate, or registration may be reinstated, at the approval of the board, if all applicable requirements have been met, along with payment of the renewal fee and a late filing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3709.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1932 (October 2014).

§403. Extensions/Exemptions—Renewal Process

A. The board may grant requests for renewal extensions or exemptions on a case-by-case basis. All requests must be made in writing, submitted via U.S. mail, to the board office and shall be reviewed at the next regularly scheduled board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3709.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analyst Board, LR 40:1933 (October 2014).

Kelly Parker
Executive Director

1410#004

RULE

Department of Health and Hospitals
Behavior Analyst Board

Supervision of Behavior Analysts (LAC 46:VIII.Chapter 5)

This Rule establishes the requirements for supervision of state certified assistant behavior analysts. This Rule outlines the supervising licensed behavior analysts responsibilities and those of the state certified assistant behavior analyst.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part VIII. Behavior Analysts
Chapter 5. Supervision Requirements for State Certified Assistant Behavior Analysts [SCABA]

§501. Supervision—General

A. A state certified assistant behavior analyst [hereinafter referred to as "SCABA"] shall assist a licensed behavior analyst [hereinafter referred to as "LBA"] in the delivery of applied behavior analysis in compliance with all state and federal statutes, regulations, and rules.

B. The SCABA may only perform services under the direct supervision of a LBA as set forth in this Rule.

C. Supervision shall be an interactive process between the LBA and SCABA. It shall be more than peer review or co-signature.

D. There shall be a written supervisory agreement between the LBA and the SCABA that shall address:

1. the domains of competency within which services may be provided by the SCABA; and

2. the nature and frequency of the supervision of the practice of the LBA by the LBA.

E. A copy of the written supervisory agreement must be maintained by the LBA and the SCABA and made available to the board upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706-R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analysts Board, LR 40:1933 (October 2014).

§502. Supervision Requirements

A. The manner of supervision shall depend on the treatment setting, patient/client caseload, and the competency of the SCABA. At a minimum, for full-time SCABAS, working at least 30 hours per week, a face-to-face supervisory meeting shall occur not less than once every four weeks, with each supervisory session lasting no less than one hour for full-time SCABAS. The qualifying supervision activities may include:

1. direct, real-time observation of the SCABA implementing behavior analytic assessment and intervention procedures with clients in natural environments and/or training others to implement them, with feedback from the supervising LBA;

2. one-to-one real-time interactions between the supervising LBA and the SCABA to review and discuss assessment procedures, assessment outcomes, possible intervention procedures and materials, data collection procedures, intervention outcome data, modifications of intervention procedures, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.

B. More frequent supervisory activities may be necessary as determined by the LBA or SCABA dependent on the level of expertise displayed by the SCABA, the practice setting, and/or the complexity of the patient/client caseload. These additional supervisory activities, however, do not qualify towards the once per month requirements. The non-qualifying additional supervision activities may include, but are not limited to:

1. real-time interactions between a supervising LBA and a group of SCABAS to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies;

2. informal interactions between supervising LBAs and SCABAs via telephone, electronic mail, and other written communication.

C. Supervision requirements for part-time practice, less than 30 hours per week, may be modified at the discretion of the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706-R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analysts Board, LR 40:1933 (October 2014).

§503. Supervisor Responsibilities

A. Qualifying supervision shall ensure that the quality of the services provided by the SCABA to his employer and to consumers is in accordance with accepted standards, including the guidelines for responsible conduct for behavior analysts and professional disciplinary and ethical standards for the Behavior Analyst Certification Board or other nation credentialing bodies as approved by the board.

B. Qualifying supervision shall guide the professional development of the SCABA in ways that improve the practitioner's knowledge and skills.

C. The LBA or the supervisor's alternate LBA designee must be available for immediate consultation with the assistant behavior analyst. The supervisor need not be physically present or on the premises at all times.

D. The LBA is ultimately responsible and accountable for client care and outcomes under his clinical supervision. The supervising LBA shall:

1. be licensed by the board as a LBA;

2. not be under restriction or discipline from any licensing board or jurisdiction;

3. not have more than 10 full-time-equivalent SCABAs under his/her supervision at one time without prior approval by the board;

4. provide at least one hour of face-to-face, direct supervision per month per each SCABA.

5. be responsible for all referrals of the patient/client;

6. be responsible for completing the patient's evaluation/assessment. The SCABA may contribute to the screening and/or evaluation process by gathering data, administering standardized tests, and reporting observations. The SCABA may not evaluate independently or initiate treatment before the supervising LBA's evaluation/assessment;

7. be responsible for developing and modifying the patient's treatment plan. The treatment plan must include goals, interventions, frequency, and duration of treatment. The SCABA may contribute to the preparation, implementation, and documentation of the treatment plan. The supervising behavior analyst shall be responsible for the outcome of the treatment plan and assigning of appropriate intervention plans to the SCABA within the competency level of the SCABA.

E. Be responsible for developing the patient's discharge plan. The SCABA may contribute to the preparation, implementation, and documentation of the discharge plan. The supervising LBA shall be responsible for the outcome of the discharge plan and assigning of appropriate tasks to the SCABA within the competency level of the SCABA.

F. Ensure that all patient/client documentation becomes a part of the permanent record.

G. Conduct at least one on-site observation per client per month.

H. The supervisor shall ensure that the SCABA provides applied behavior analysis as defined in R.S. 37:3702 appropriate to and consistent with his/her education, training, and experience.

I. Inform the board of the termination in a supervisory relationship within 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706-R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analysts Board, LR 40:1934 (October 2014).

§504. SCABA Responsibilities

A. The supervising LBA has the overall responsibility for providing the necessary supervision to protect the health and welfare of the patient/client receiving treatment from an SCABA. However, this does not absolve the SCABA from his/her professional responsibilities. The SCABA shall exercise sound judgment and provide adequate care in the performance of duties. The SCABA shall:

1. not initiate any patient/client treatment program or modification of said program until the behavior analyst has evaluated, established a treatment plan, and consulted with the LBA;

2. not perform an evaluation/assessment, but may assist in the data gathering process and administer specific assessments where clinical competency has been demonstrated, under the direction of the LBA;

3. not analyze or interpret evaluation data;

4. monitor the need for reassessment and report changes in status that might warrant reassessment or referral;

5. immediately suspend any treatment intervention that appears harmful to the patient/client and immediately notify the supervising LBA; and

6. ensure that all patient/client documentation prepared by the SCABA becomes a part of the permanent record;

7. meet these supervision requirements, even if they are not currently providing behavior analysis services. If not currently providing behavior analysis services, supervision from the supervising LBA may focus on guiding the development and maintenance of the SCABA's professional knowledge and skills and remaining current with the professional literature in the field;

8. inform the board of the termination in a supervisory relationship within 30 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3706-R.S. 37:3708.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Behavior Analysts Board, LR 40:1934 (October 2014).

Kelly Parker
Executive Director

1410#002

RULE

Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Behavioral Health

Behavioral Health Services
Physician Payment Methodology
(LAC 50:XXXIII.Chapter 17)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health have adopted LAC 50:XXXIII.Chapter 17 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 XXXIII. Behavioral Health Services
Subpart 2. General Provisions
Chapter 17. Behavioral Health Services Reimbursements
§1701. Physician Payment Methodology

A. The reimbursement rates for physician services rendered under the Louisiana Behavioral Health Partnership (LBHP) 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. Effective for dates of service on or after April 20, 2013, the reimbursement for behavioral health services rendered by a physician under the LBHP shall be 75 percent of the 2009 Louisiana Medicare Region 99 allowable for services rendered to Medicaid recipients.

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 Behavioral Health, LR 40:1697 (September 2014), amended LR 40:1935 (October 2014).

Kathy H. Kliebert
Secretary

1410#077

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Disproportionate Share Hospital Payments
Non-Rural Community Hospitals
(LAC 50:V.2701)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:V.2701 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 V. Hospital Services
Subpart 3. Disproportionate Share Hospital Payments
Chapter 27. Qualifying Hospitals
§2701. Non-Rural Community Hospitals

A. Definitions

Non-Rural Community Hospital—a non-state, non-rural hospital that may be either publicly or privately owned. Psychiatric, rehabilitation and long term hospitals may also qualify for this category.

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 18 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.

C. 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.

D. 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.

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

F. Hospitals qualifying as non-rural community hospitals in state fiscal year 2013-14 may also qualify in the federally mandated statutory hospital category.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:1935 (October 2014).

Kathy H. Kliebert
Secretary

1410#178

RULE

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

Home and Community-Based Services Waivers
Support Coordination Standards for Participation
(LAC 50:XXI.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:XXI.Chapter 5 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 XXI. Home and Community Based Services Waivers
Subpart 1. General Provisions
Chapter 5. Support Coordination Standards for Participation for Office of Aging and Adult Services Waiver ProgramsSubchapter A. General Provisions

§509. Certification Review

A. Compliance with certification requirements is determined by OAAS through its agency review and support coordination monitoring processes. This review is usually annual but may be conducted at any time and may be conducted without advance notice. Monitors must be given access to all areas of the agency and all relevant files and records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013), amended LR 40:1936 (October 2014).

Subchapter B. Administration and Organization

§513. Governing Body

A. ...

1. An agency shall have documents identifying all members of the governing body, their addresses, their terms of membership, and officers of the governing body.

2. The governing body shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body.

4. There shall be governing body by-laws which specify the frequency of meetings and quorum requirements.

B. The governing body of a support coordination agency shall:

1. - 2. …

3. review and approve the agency's annual budget; and

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

5. - 11. Repealed.

C. - C.10. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3087 (November 2013), amended LR 40:1936 (October 2014).

§515. Business Location and Operations

A. Each support coordination agency shall have a business location which shall not be in an occupied personal residence. The business location shall be in the DHH region for which the certification is issued and shall be where the agency:

1. …

2. maintains the agency's personnel records; and

3. maintains the agency's participant service records.

4. Repealed.

B. The business location shall have:

1. - 3. …

4. internet access and a working e-mail address;

5. hours of operation, which must be at least 40 hours a week, Monday-Friday, posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

B.6. - C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013), amended LR 40:1936 (October 2014).

§517. Financial Management

A. - B. …

C. For the protection of its participants, staff, facilities, and the general public, the agency must have at least $150,000 in general liability and at least $150,000 in professional liability insurance coverage.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3088 (November 2013), amended LR 40:1936 (October 2014).

§521. Organizational Communication

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

B. - D.3. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3089 (November 2013), amended LR 40:1936 (October 2014).

Subchapter C. Provider Responsibilities

§529. Transfers and Discharges

A. - C. …

D. The transfer or discharge responsibilities of the support coordinator shall include:

1. - 2. …

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary

on the health, behavioral, and social issues of the participant and shall be provided to the receiving support coordination agency (if applicable).

E. - G. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3090 (November 2013), amended LR 40:1936 (October 2014).

§531. Staffing Requirements

A. Agencies must maintain sufficient staff to comply with OAAS staffing, timeline, workload, and performance requirements. This includes, but is not limited to, including sufficient support coordinators and support coordinator supervisors that have passed all of the OAAS training and certification requirements. At all times, an agency must have at least one certified support coordination supervisor and at least one certified support coordinator, both employed full time. Agencies may employ staff who are not certified to perform services or requirements other than assessment and care planning.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013), amended LR 40:1937 (October 2014).

§533. Personnel Standards

A. Support coordinators must meet one of the following requirements:

1. - 3.j. …

k. gerontology;

A.3.l. - B.3. …

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the following fields: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehab services, child development, substance abuse, gerontology, or vocational rehabilitation and two years of paid post degree experience in providing support coordination services.

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3091 (November 2013), amended LR 40:1937 (October 2014).

§537. Orientation and Training

A. …

B. Orientation shall be provided by the agency to all staff, volunteers and students within five working days of begin/employment date.

C. Orientation and training of at least 32 hours shall be provided by the agency to all newly hired support coordinators within five working days of employment. The topics shall be agency/OAAS specific and shall include, at a minimum:

1. core OAAS support coordination requirements;
2. agency policies and procedures;
3. confidentiality;
4. case record documentation;
5. participant rights protection and reporting of violations;
6. professional ethics;
7. emergency and safety procedures;
8. infection control, including universal precautions;
9. overview of all OAAS waivers and services;
10. fundamentals of support coordination (e.g. person centered planning, emergency planning, back-up staff planning, critical incident reporting, risk assessment and mitigation, etc.);
11. interviewing techniques;
12. data management;
13. communication skills;
14. community resources;
15. continuous quality improvement; and
16. abuse and neglect policies and procedures.

D. Upon completion of the agency-provided training requirements set forth above, support coordinators and support coordination supervisors must successfully complete all OAAS assessment and care planning training.

E. …

F. All support coordinators and support coordination supervisors must complete a minimum of 16 hours of training per year. For new employees, the orientation cannot be counted toward the 16 hour minimum annual training requirement. The 16 hours of initial training for support coordinators required in the first 90 days of employment may be counted toward the 16 hour minimum annual training requirement. Routine supervision shall not be considered training.

G. A newly hired or promoted support coordination supervisor must, in addition to satisfactorily completing the orientation and training set forth above, also complete a minimum of 24 hours on all of the following topics prior to assuming support coordination supervisory responsibilities:

1. orientation/in-service training of staff;
2. evaluating staff;
3. approaches to supervision;
4. managing workload and performance requirements;
5. conflict resolution;
6. documentation;
7. population specific service needs and resources; and
8. the support coordination supervisor's role in continuous quality improvement (CQI) systems.
9. - 11. Repealed.

H. Documentation of all orientation and training must be placed in the individual's personnel file. Documentation must include a training agenda, name of presenter(s), title, agency affiliation and/or other sources of training (e.g. web/on-line trainings, etc.).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3092 (November 2013), amended LR 40:1937 (October 2014).

§539. Participant Rights

A. - B. …

C. Each support coordination agency's written policies and procedures, at a minimum, shall ensure the participant's right to:

1. confidentiality;

2. privacy;

3. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;

4. access to the interpretive services, translated material and similar accommodations as appropriate;

5. access to his/her records upon the participant's written consent for release of information;

6. an explanation of the nature of services to be received;

7. actively participate in services;

8. refuse services or participate in any activity against their will;

9. obtain copies of the support coordination agency's complaint or grievance procedures;

10. file a complaint or grievance without retribution, retaliation or discharge;

11. be informed of the financial aspect of services;

12. give informed written consent prior to being involved in research projects;

13. refuse to participate in any research project without compromising access to services;

14. be free from mental, emotional and physical abuse and neglect;

15. be free from chemical or physical restraints;

16. receive services that are delivered in a professional manner and are respectful of the participant's wishes concerning their home environment;

17. receive services in the least intrusive manner appropriate to their needs;

18. contact any advocacy resources as needed, especially during grievance procedures; and

19. discontinue services with one provider and choose the services of another provider.

20. - 24. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3092 (November 2013), amended LR 40:1937 (October 2014).

§541. Grievances

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013), amended LR 40:1938 (October 2014).

§543. Critical Incident Reporting

A. …

B. - B.5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013), amended LR 40:1938 (October 2014).

§545. Participant Records

A. Participant records shall be maintained in the support coordinator's office. The support coordinator shall have a current written record for each participant.

1. - 6. Repealed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3093 (November 2013), amended LR 40:1938 (October 2014).

§547. Emergency Preparedness

A. …

B. Continuity of Operations. The support coordination agency shall have an emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during, and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the agency's ability to render services.

1. - 9. Repealed.

C. The support coordination agency shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

D. The support coordinator shall cooperate with the department and with the local or parish Office of Homeland Security and Emergency Preparedness in the event of an emergency or disaster and shall provide information as requested.

E. The support coordinator shall monitor weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials.

F. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training, and participation in planned drills for all personnel.

G. Upon request by the department, the support coordination agency shall submit a copy of its emergency preparedness plan and a written summary attesting to how the plan was followed and executed.

H. - I.5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3094 (November 2013), amended LR 40:1938 (October 2014).

§549. Continuous Quality Improvement Plan

A. Support coordination agencies shall have a continuous quality improvement (CQI) plan which governs the agency's internal quality management activities.

B. The CQI plan shall demonstrate a process of continuous cyclical improvement and include the following:

1. *design*—continuous quality improvement approach detailing how the agency monitors its operations and makes improvements when problems are detected;

2. *discovery*—the methods used to uncover problems and deviations from plan design and programmatic processes in a timely fashion;

3. *remediation*—the process of addressing and resolving problems uncovered in the course of discovery; and

4. *improvement*—the actions taken to make adjustments to the system's processes or procedures to prevent or minimize future problems.

C. - D.7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3094 (November 2013), amended LR 40:1938 (October 2014).

§551. Support Coordination Monitoring

A. Support coordination agencies shall be monitored annually as outlined in the OAAS policies and procedures.

1. - 4. Repealed.

B. Support coordination agencies shall offer full cooperation with the OAAS during the monitoring process. Responsibilities of the support coordination agency in the monitoring process include, but are not limited to:

1. providing policy and procedure manuals, personnel records, case records, and other documentation;

2. providing space for documentation review and support coordinator interviews; and

3. coordinating agency support coordinator interviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:3095 (November 2013), amended LR 40:1939 (October 2014).

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.

Kathy H. Kliebert
Secretary

1410#079

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.953)

Editor's Note: This Rule is being repromulgated to correct citation errors. The original Rule may be viewed in its entirety on pages 3297-3298 of the December 20, 2013, edition of the *Louisiana Register*.

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.953 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 V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§953. Acute Care Hospitals

A. - N.2.b. …

3. Effective for dates of service on or after January 1, 2011, all parties that participate in supplemental payments under this Section, either as a qualifying hospital by receipt of supplemental payments or as a state or local governmental entity funding supplemental payments, must meet the following conditions during the period of their participation.

a. Each participant must comply with the prospective conditions of participation in the Louisiana Private Hospital Upper Payment Limit Supplemental Reimbursement Program.

b. A participating hospital may not make a cash or in-kind transfer to their affiliated governmental entity that has a direct or indirect relationship to Medicaid payments and would violate federal law.

c. A participating governmental entity may not condition the amount it funds the Medicaid Program on a specified or required minimum amount of low income and needy care.

d. A participating governmental entity may not assign any of its contractual or statutory obligations to an affiliated hospital.

e. A participating governmental entity may not recoup funds from an affiliated hospital that has not adequately performed under the low income and needy care collaboration agreement.

f. A participating hospital may not return any of the supplemental payments it receives under this Section to the governmental entity that provides the non-federal share of the supplemental payments.

g. A participating governmental entity may not receive any portion of the supplemental payments made to a participating hospital under this Section.

4. Each participant must certify that it complies with the requirements of §953.N.3 by executing the appropriate certification form designated by the department for this purpose. The completed form must be submitted to the Department of Health and Hospitals, Bureau of Health Services Financing.

5. Each qualifying hospital must submit a copy of its low income and needy care collaboration agreement to the department.

6. The supplemental payments authorized in this Section shall not be considered as interim Medicaid inpatient payments in the determination of cost settlement amounts for inpatient hospital services rendered by children's specialty hospitals.

O. - Q.1. …

R. - S. ...

T. Reserved.

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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:1896 (September 2009), LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 37:2161 (July 2011), LR 39:3297 (December 2013), repromulgated LR 40:1939 (October 2014).

Kathy H. Kliebert
Secretary

1410#080

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reductions
(LAC 50:V.Chapter 9)

Editor's Note: This Rule is being repromulgated to correct citation errors in Section 953. The original Rule may be viewed in its entirety on page 312 of the February 20, 2014, edition of the *Louisiana Register*.

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.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 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 V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - Q.1. …

R. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to acute care hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

S. Effective for dates of service on or after February 1, 2013, the inpatient per diem rate paid to acute care hospitals shall be reduced by 1 percent of the per diem rate on file as of January 31, 2013.

T. Reserved.

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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1552(July 2010), LR 36:2561 (November, 2010), LR 37:2161 (July 2011), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014).

§955. Long Term Hospitals

A. - H. …

I. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to long term hospitals shall be reduced by 3.7 percent of the per diem rate on file as of July 31, 2012.

J. Effective for dates of service on or after February 1, 2013, the inpatient per diem rate paid to long term hospitals shall be reduced by 1 percent of the per diem rate on file as of January 31, 2013.

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: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), amended LR 36:1554 (July 2010), LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014).

§967. Children's Specialty Hospitals

A. - H. …

I. - I.3. ...

J. Effective for dates of service on or after August 1, 2012, the per diem rates as calculated per §967.A-C above shall be reduced by 3.7 percent. Final payment shall be the lesser of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A-C for the period, multiplied by 85.53 percent of the target rate per discharge or per diem limitation as specified per §967.A-C for the period.

K. Effective for dates of service on or after February 1, 2013, the per diem rates as calculated per §967.A-C above shall be reduced by 1 percent. Final payment shall be the lesser of allowable inpatient acute care and psychiatric costs as determined by the cost report or the Medicaid discharges or days as specified per §967.A-C for the period, multiplied by 84.67 percent of the target rate per discharge or per diem limitation as specified per §967.A-C for the 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, Bureau of Health Services Financing, amended LR 36:2562 (November, 2010), LR 37:2162 (July 2011), LR 40:312 (February 2014), repromulgated LR 40:1940 (October 2014).

Kathy H. Kliebert
Secretary

1410#081

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Out-of-State Hospitals
Reimbursement Methodology

The Department of Health and Hospitals, Bureau of Health Services Financing has repealed the December 20, 2000 Rule governing the reimbursement methodology for inpatient hospital services provided by out-of-state hospitals covered under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254, and pursuant to Title XIX of the Social Security Act. This Rule is adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

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.

Kathy H. Kliebert
Secretary

1410#082

RULE

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Reimbursement Methodology
(LAC 50:V.551 and 967)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.551 and §967 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 V. Hospital Services
Subpart 1. Inpatient Hospital Services
Chapter 5. State Hospitals
Subchapter B. Reimbursement Methodology
§551. Acute Care Hospitals

A. - D. ...

E. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid monthly by Medicaid as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. *Qualifying Medical Education Programs*—graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each state hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and allowable inpatient Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

F. Effective for dates of service on or after August 1, 2012, the inpatient per diem rate paid to state-owned acute care hospitals, excluding Villa Feliciana and inpatient psychiatric services, shall be reduced by 10 percent of the per diem rate on file as of July 31, 2012.

1. The Medicaid payments to state-owned hospitals that qualify for the supplemental payments, excluding Villa Feliciana and inpatient psychiatric services, shall be reimbursed at 90 percent of allowable costs and shall not be subject to per discharge or per diem limits.

2. The Medicaid payments to state-owned hospitals that do not qualify for the supplemental payments shall be reimbursed at 54 percent of allowable costs.

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, amended LR 38:1241 (May 2012), LR 38:2772 (November 2012), LR 40:312 (February 2014), LR 40:1941 (October 2014).

Chapter 9. Non-Rural, Non-State Hospitals
Subchapter B. Reimbursement Methodology
§967. Children's Specialty Hospitals

A. - H. ...

I. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid by Medicaid monthly as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. *Qualifying Medical Education Programs*—graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each children's specialty hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and medical education costs for the cost reporting period per the Medicaid cost report. Reimbursement shall be at the same percentage that is reimbursed for fee-for-service covered Medicaid costs after application of reimbursement caps as specified in §967.A-C and reductions specified in §967.F-H.

J. - K. ...

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 36:2562 (November 2010), LR 37:2162 (July 2011), LR 38:2773 (November 2012), LR 39:3097 (November 2013), LR 40:312 (February 2014), LR 40:1941 (October 2014).

Kathy H. Kliebert
Secretary

1410#083

RULE

Department of Health and Hospitals
Office of Public Health

Health Examination for Employees, Volunteers and Patients at Certain Medical Facilities (LAC 51:II.503)

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), adopts the *Louisiana Administrative Code* (Louisiana *Sanitary Code*), Title 51, "The Control of Diseases," Chapter 5, "Health Examination for Employees, Volunteers and Patients at Certain Medical Facilities." This action provides a third alternative to the annual screening testing of employees and volunteers at Louisiana hospitals and nursing homes now required on an annual basis. This third alternative is a simple screening questionnaire, which may be used instead of the other alternatives, the tuberculin skin test, also known as the Mantoux test, or the blood test, also known as the blood assay test. The initial screening test

of an employee or volunteer upon initial employment or acceptance as a volunteer will remain either the skin test or the blood assay test. The requirement for screening testing of patients remains unchanged.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part II. The Control of Diseases

Chapter 5. Health Examinations for Employees, Volunteers and Patients at Certain Medical Facilities

§503. Mandatory Tuberculosis Testing

A. [formerly paragraph 2:022] All persons prior to or at the time of employment at any hospital or nursing home (as defined in Parts XIX and XX, respectively, herein, and including intermediate care facilities for the developmentally disabled) requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Health and Hospitals, Office of Public Health out-patient health care facility or any person prior to or at the time of commencing volunteer work involving direct patient care at any hospital or nursing home (as defined in Parts XIX and XX, respectively, herein, and including intermediate care facilities for the developmentally disabled) requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Health and Hospitals, Office of Public Health out-patient health care facility shall be free of tuberculosis in a communicable state as evidenced by either:

1. a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration;

2. a normal chest X-ray, if the skin test or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration; is positive; or

3. a statement from a licensed physician certifying that the individual is non-infectious if the X-ray is other than normal. The individual shall not be denied access to work solely on the basis of being infected with tuberculosis, provided the infection is not communicable.

B. [formerly paragraph 2:023] Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Public Health and Hospitals, Office of Public Health out-patient health care facility who has a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a positive blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration; or a chest x-ray other than normal, in order to remain employed or continue work as a volunteer, shall complete an adequate course of chemotherapy for tuberculosis as prescribed by a Louisiana licensed physician, or shall present a signed statement from a Louisiana licensed physician stating that chemotherapy is not indicated.

C. [formerly paragraph 2:024] Any employee or volunteer at any medical or 24-hour residential facility requiring licensing by the Department of Health and Hospitals or at any Department of Health and Hospitals, Office of Public Health parish health unit or Department of Public Health and Hospitals, Office of Public Health out-patient health care facility who has a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a negative result of a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration in order to remain employed or continue work as a volunteer, shall be rescreened annually by one of the following methods: purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration remains negative, or a completed questionnaire asking of the person pertinent questions related to active tuberculosis symptoms, including, but not limited to: do you have a productive cough that has lasted at least 3 weeks? (Yes or No), are you coughing up blood (hemoptysis)? (Yes or No), have you had an unexplained weight loss recently? (Yes or No), have you had fever, chills, or night sweats for 3 or more days? (Yes or No). Any employee converting from a negative to a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method or a blood assay for *Mycobacterium tuberculosis* approved by the United States Food and Drug Administration or having indicated symptoms of active tuberculosis revealed by the completed questionnaire, which indicates the person may have tuberculosis in a communicable state shall be referred to a physician and followed as indicated in §503.B. All initial screening test results and all follow-up screening test results shall be kept in each employee's or volunteer's health record.

D. [formerly paragraph 2:033] All persons with acquired immunodeficiency syndrome (AIDS) or known to be infected with the human immunodeficiency virus (HIV), in the process of receiving medical treatment related to such condition, shall be screened for tuberculosis in a communicable state, with screening to include a chest X-ray. Sputum smear and culture shall be done if the chest X-ray is abnormal or if the patient exhibits symptoms of tuberculosis. Screening for tuberculosis shall be repeated as medically indicated.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1220 (June 2002), amended LR 32:98 (January 2006), LR 33:93 (January 2007), LR 37:598 (February 2011), LR 40:1942 (October 2014).

J.T. Lane
Assistant Secretary

1410#025

RULE

Department of Health and Hospitals
Office of Public Health

Registration of Foods, Drugs, Cosmetics, and Prophylactic Devices (LAC 51:VI.101 and 105)

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), reenacts and amends parts of Sections 101 and 105 of Part VI (Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics) of the Louisiana state *Sanitary Code* (LAC 51). This Rule increases the fees assessed for product registration from their current levels to the maximum allowed by statute (R.S. 40:628). The Legislature last granted a fee increase during the 1st Extraordinary Session, but fees were not subsequently raised by Rule.

Title 51
PUBLIC HEALTH—SANITARY CODE
Part VI. Manufacturing, Processing, Packing, and Holding of Food, Drugs, and Cosmetics
Chapter 1. General Regulations, Definitions, Permits, Registration, Machinery, Equipment and Utensils, Premises and Buildings, Temperature Control

§101. Definitions [formerly paragraph 6:001]

A. Unless otherwise specifically provided herein, the following words and terms used in this Chapter of the *Sanitary Code*, and all other Chapters which are adopted or may be adopted, are defined for the purposes thereof as follows.

* * *

Dba—the actual or juridical person whose name and address appear on the label of a product as the responsible party for said product.

* * *

Out-of-State Soft Drink—those items meeting the definition of *soft drink* in §1101.A of this Part and bearing a dba statement whose address is outside of the state of Louisiana.

* * *

Product Category—classification of products subject to registration into one of five groups: milk and dairy products (M), seafood products (S), other foods and beverages (F), drugs (D), cosmetics (C), or prophylactics (P). These categories are exclusive of items defined as *out-of-state soft drinks*.

* * *

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. 40:4(A)(1)(a) and R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21). Also see R.S. 40:601 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1230 (June 2002), amended LR 40:1943 (October 2014).

§105. Registration of Foods, Drugs, Cosmetics, and Prophylactic Devices [formerly paragraph 6:008-1]

A. Registration Provisions. In accordance with the provisions of R.S. 40:627, all processed foods, proprietary or patent medicines, prophylactic devices and cosmetics, in package form, must be registered annually with the Louisiana Food and Drug Unit of the OPH/DHH. Application for registration may be accomplished by using the appropriate form supplied by the Food and Drug Unit.

B. - D. ...

E. [formerly paragraph 6:008-5] Penalty. All firms shall apply for annual registration of their products. These certificates of registration expire 12 months from the date of issuance. Any applications received in the Food and Drug Control Unit Office more than 45 days after expiration of the previous certificate shall be assessed a late registration fee as stipulated in R.S. 40:627(D).

F. Product registration fees shall be assessed according to the following schedule:

1. for out-of-state soft drinks, according to the provisions of R.S. 40:716;

2. for all other products subject to registration requirements, a per product per dba per product category fee, up to the maximum allowed for under R.S. 40:628(B) per dba per product category.

G. For registration renewals, the provisions of Subsection F will be effective beginning with registrations having an expiration date of June 30, 2016.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(8)(15)(17)(19)(21), R.S. 40:628 and R.S. 40:716.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28: 1232 (June 2002), amended LR 40:1943 (October 2014).

Kathy H. Kliebert
Secretary

1410#026

RULE

Department of Natural Resources
Office of Coastal Management

Administration of the Fisherman's Gear Compensation Fund (LAC 43:I.Chapter 15)

Under the authority of R.S. 49:214.21-49:214.41 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management has amended LAC 43:I.Chapter 15 relative to the administration of the Fisherman's Gear Compensation Fund.

The Rule amendment will: change the publishing method to achieve cost savings; improve the public's access to program related information; update incident site reporting methods; ensure that obstruction areas are reported using currently available, commonly used, industry standard navigation methods; better define required claim documentation needed from claimants; and remove extraneous information.

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 1. General
Chapter 15. Administration of the Fisherman's Gear Compensation Fund

§1501. Statutory Authorization and Definitions

A. General. The Fisherman's Gear Compensation Program is designed to compensate commercial fishermen whose fishing gear, equipment, or vessels are damaged by underwater obstructions in the Louisiana coastal zone and claims are subject to the requirements of these guidelines and all guidelines must be complied with.

B. Definitions. As used in these regulations the following terms and phrases shall have the definition ascribed to them.

Claimant—any vessel owner who files a claim under the provisions of these regulations and R.S. 56:700.1-700.5.

Commercial Fisherman—any citizen of the state of Louisiana who possesses a valid Louisiana residential commercial fishing license and who derives a primary source of his or her income from the harvesting of living marine resources for commercial purposes.

Department—the Louisiana Department of Natural Resources and regulatory authority means the secretary thereof and the personnel appointed or employed thereby who administer the commercial Fishermen's Gear Compensation Fund.

Fishing Gear—any licensed marine vessel and any equipment, whether or not attached to a vessel, in which are used in the handling or harvesting of commercial marine resources. Crab traps are expressly excluded from the definition.

Fund—the Fisherman's Gear Compensation Fund.

Hearing Examiner—the person(s) employed or appointed by the regulatory authority to conduct hearings, take oral and written testimony from claimants and other witnesses, and make recommendations to the regulatory authority on the validity and payment of claims.

Obstruction—any object, obstacle, equipment or device located in state water within the geographical boundary of the fund, set forth in R.S. 49:214.24 whether natural or man-made; provided that this definition shall not be applied to obstructions floating on the surface which could be avoided by a reasonably prudent fisherman.

Primary Source of Income—that source of revenue earned by a claimant from commercial fishing endeavors which is deemed by the regulatory authority to constitute a fundamental source of such claimant's annual earned income. Annual earned income shall be income earned from all sources reportable on state and federal income tax returns. Any claimant who presents satisfactory proof that at least 50 percent of his or her annual income in the year preceding the year of the claim was earned from commercial fishing endeavors shall be deemed to derive a primary source of his or her income therefrom.

Satisfactory Proof—as it relates to demonstrating a primary source of income, a certified copy of state and federal income tax returns together with related financial data. In the case of a claimant being a corporation, a certified copy of the state and federal corporate tax return shall be submitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 14:545 (August 1988), LR 21:956 (September 1995), amended by the Office of Coastal Management, LR 40:1944 (October 2014).

§1503. Geographic Boundary of Fund

A. Claims shall be based on damage or loss of fishing gear due to an encounter with an obstruction in state waters located below the northern boundary of the Louisiana coastal zone as set forth in R.S. 49:214.24, and depicted on official maps of the state regulatory authority having jurisdiction over coastal zone management, and extending seaward to the limits of Louisiana's territorial jurisdiction.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 11:29 (January 1987), LR 21:956 (September 1995), amended by the Office of Coastal Management, LR 40:1944 (October 2014).

§1507. Identification of Area of Obstruction

A. When an obstruction has been encountered by a claimant from which encounter a claim for damages to the fund is made, the claim shall not be accepted unless accompanied by sufficient information by which to locate the area of the obstruction. Such information shall be conveyed on forms furnished by the department when available, or otherwise in a manner sufficiently clear to be usable by the department in charting the obstruction.

1. No future claim shall be filed by a claimant for an encounter with an obstruction at the same location reported by the fisherman on a previous claim.

B. - B.5. …

a. latitude/longitude coordinates. Provide coordinates in geographic coordinate system (GCS) North American Datum (NAD) 83 latitude/longitude decimal degrees (e.g., N 29° 50.893, W 89° 20.360) or equivalent;

b. - d. …

e. distance and direction to floating navigational aids such as buoys. Identify any buoy by name, number, color, type and lightlist number if known;

f. alternate navigation methods may be used if they are available. These include global positioning system (GPS), and similar electronic navigation systems that may be in use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:956 (September 1995), amended by the Office of Coastal Management, LR 40:1944 (October 2014).

§1509. Claims—General Form and Content

A. The Fishermen's Gear Compensation Fund shall be limited to the payment of no more than two claims for damage or loss of fishing gear filed by claimants during a fiscal year applicable to the department (July 1-June 30). Claims must be received by the Program within the period indicated. A single claim may not exceed $5,000, but in no event shall any payment of a claim exceed the amount of gross income earned by the claimant from fishing endeavors

in the year preceding the claim. Claims shall be by affidavit, signed by the claimant on forms furnished by the department when available and shall contain, in addition to the requirements of §1507 herein, the following information:

1. - 5. …

a. the nature and extent of the damage and loss suffered; a photograph, or series of photographs of vessel damage which must show the claimed damage while still on the vessel, and a photograph, or series of photographs, that show the registration/documentation number and/or name of the vessel; a detailed description of the gear involved and where pertinent, a list of components such as size, type, grade, etc.; In the instance of a total loss of gear, a photograph or series of photographs are required from the place on the vessel where the gear was lost and where the gear would normally be attached, except in the circumstance of a total loss of nets in which the claimant will provide documentation and evidence to support the loss;

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include: paid receipts which are completely filled out including the date, full name, address and telephone of the seller along with the claimant's name and/or address together with proof of payment such as copies of money orders or bank cashier's checks for the gear; affidavits; or other evidence. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule. Claimants that made or repaired the damaged gear shall submit a notarized statement that he or she made his or her own gear along with paid receipts for the materials. If all damaged gear was original to the vessel when it was purchased or acquired, a copy of the bill of sale of the boat or subsequent notarized statement to the effect that all gear was original to the boat including date vessel was acquired, full name of seller, and sale price must be included;

c. - e. …

6. a detailed statement of the efforts made by claimant to identify, locate and collect damages for his loss from the person financially responsible therefore accompanied by copies of all correspondence related thereto;

A.7. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:957 (September 1995), amended by the Office of Coastal Management, LR 40:1944 (October 2014).

§1511. Hearing Examiner; Small Claims; Adjudicatory Hearings

A. - E. …

F. The regulatory authority shall publish a monthly report of the number and total dollar amount of the claims filed, the number of claims denied, the number of claims paid and the total dollar amount of the claims paid, and the latitude and longitude coordinate locations of each claim for which it is available, on the Fishermen's Gear Compensation Program website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 16:416 (May 1990), amended by the Office of Coastal Management, LR 40:1945 (October 2014).

§1513. Penalties

A. The intentional rendering of a financial statement of account, which is known to be false, by anyone who is obliged to render an accounting pursuant to R.S. 56:700.1-700.5, or these regulations, shall be punishable pursuant to the provision of the *Louisiana Criminal Code*, R.S. 14:70, false accounting.

B. The filing or depositing, with knowledge or falsity, of any forged or wrongfully altered document, for record in any claim or proceeding before a hearing examiner or other administrator of the fund, shall be punishable pursuant to the provisions of the *Louisiana Criminal Code*, R.S. 14:133, filing false public records.

C. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.2.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:513 (August 1980), amended by the Office of Coastal Management, LR 40:1945 (October 2014).

§1517. Rules for Labeling Equipment, Tools, Materials, and Containers Used by the Oil and Gas Industry within Louisiana Coastal Waters

A. - B.4. …

C. Each incident of items lost overboard shall be reported initially by telephone to the Department of Natural Resources (225) 342-7591 during regular business hours, and also on a standard form to be provided by the Department of Natural Resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.5.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 17:272 (March 1991), amended by the Office of Coastal Management, LR 40:1945 (October 2014).

Keith Lovell
Assistant Secretary

1410#019

RULE

Department of Transportation and Development
Office of Operations

Special Permits for Transporting Hay (LAC 73:I.303)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 32:387(C)(2), the Department of Transportation and Development, Office of Operations, has amended Part I, Chapter 3, §303 to add Paragraph L authorizing the department to issue special permits for oversized loads of hay during a Presidential declaration of emergency or disaster.

Title 73
WEIGHTS, MEASURES AND STANDARDS
Part I. Weights and Standards
Chapter 3. Oversize and Overweight Permit
§303. Types of Permits

A. - K. …

L. Special Permits for Transporting Hay

1. If there is a declaration of emergency or disaster in this state or another, for causes such as but not limited to severe and extended drought conditions, special permits may

be issued by the secretary for those vehicles transporting hay. The permit fee shall be $10 and shall be valid for only as long as the emergency exists, not to exceed one year. In addition, the following restrictions shall apply.

a. The total length of the vehicle and trailer shall not exceed 65 feet on non-interstate routes and the load and trailer shall not exceed 59 feet 6 inches on Interstate routes. The total weight of the vehicle and trailer shall not exceed 80,000 pounds for a 5 axle rig and 83,400 pounds for a 6 axle rig which also must include a tridum. Vehicles transporting hay bales loaded side by side across trailers shall not exceed 12 feet in width and 14 feet in height.

b. Travel is limited to daylight hours beginning at sunrise and ending at sunset and is limited by all no movement requirements on certain holidays.

c. Vehicles must travel with the required signs and flags properly placed and indicating that they carry oversized loads.

d. Vehicles must be equipped with mirrors that allow drivers to have a clear view of the highway to least 200 feet to the rear of the vehicle.

e. Loads must be securely bound to the transporting vehicles.

f. Carriers, owners and drivers of any vehicle being operated are responsible for verifying in advance that the actual dimensions and weights of the vehicles and loads are acceptable for all routes being traveled.

g. It is the responsibility of the carriers, owners and drivers to track the status of the declared emergencies. In the event the emergency expires prior to the one year period, the owner, carrier and driver shall be responsible for terminating use of the permit. Information regarding the status of declared emergencies may obtained by calling the department Permit Office toll free at (800) 654-1433 or (225) 343-2345 for the Baton Rouge area.

h. No vehicle shall exceed weight limits posted for bridges and similar 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 5:36 (February 1979), amended by the Department of Transportation and Development, Office of Operations and the Department of Public Safety and Corrections, Office of State Police, LR 39:98 (January 2013), amended by the Department of Transportation and Development, Office of Operations, LR 40:1945 (October 2014).

Sherri H. LeBas
Secretary

1410#022

RULE

Department of Transportation and Development
Transportation Authority

Toll Appeal Procedure—LA 1 (LAC 70:XI.303)

In accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 47:820.5.4 and 820.5.5., the Department of Transportation and Development, Transportation Authority, has amended Chapter 3, §303.A.1 and A.9, to include electronic mail as a method by which the registered owner of a violating vehicle may be notified of an appeal or an appeal decision; §303.A.2, to allow toll hearings to be conducted more frequently than quarterly, and §303.A.2, to allow toll hearings to be conducted at either location specified in the Rule.

Title 70
TRANSPORTATION
Part XI. Louisiana Transportation Authority
Chapter 3. Toll Appeal Procedure—LA 1
§303. Appeal Procedures—LA 1

A. …

1. Notice of the date, time and location of the appeal hearing shall be sent to the toll violator by mail or electronic mail 10 days in advance of the scheduled hearing.

2. Location of the hearing may 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, LA, unless otherwise notified.

3. Hearings shall be conducted not less than quarterly.

4. - 8. …

9. Notice of decision shall be made in person or by mail or electronic mail.

10. …

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 2013), amended LR 40:1946 (October 2014).

Sherri H. LeBas
Secretary

1410#023

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Commercial Fishing—Lake Bruin, False River Lake, and Lake Providence (LAC 76:VII.125, 158, and 163)

The Wildlife and Fisheries Commission has amended the opening date of the recurring commercial fishing seasons in Lake Bruin (Tensas Parish), False River Lake (Pointe Coupee Parish), and Lake Providence (East Carroll Parish), Louisiana.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic life
Chapter 1. Freshwater Sports and Commercial Fishing
§125. Lake Bruin

A. The Wildlife and Fisheries Commission hereby establishes and permits a special recurring commercial fishing season, allowing the use of certain nets and slat traps, in Lake Bruin, Tensas Parish, Louisiana. The season will commence each year at sunrise on October 1 and close at sunset on the last day of February the following year.

1. Commercial fishing with certain nets and slat traps will be allowed on Lake Bruin only during the above

described special season and only by licensed commercial fishermen who must also obtain a Lake Bruin commercial fishing permit from the Department of Wildlife and Fisheries. The permit will be issued at no cost on a seasonal basis and must be renewed for each season. The permittee must also file a report to the Department of Wildlife and Fisheries of his catch that is postmarked not later than 15 days after the close of that season. The use of nets in Lake Bruin will be limited to gill and trammel nets greater than or having at least a minimum mesh of 3 1/2-inch bar and 7-inch stretch.

2. Commercial fishing will be allowed only during daylight hours except that gear can remain set overnight but fish captured may be removed during daylight hours only.

3. Failure to comply with the terms of the special permit or of any Louisiana commercial fishing regulations shall result in immediate cancellation of the permit for the remainder of the current season.

4. Failure to submit a timely report for a particular year's commercial fishing season shall result in the denial of a permit for the next year. If a report is eventually received after the deadline period for a particular year, the applicant may get a permit after skipping a year, however, if no report is ever filed, no permit for any subsequent year will be considered.

5. Applicants with a citation(s) pending for three years or less, which is a class 2 fish or game violation(s) or greater shall be denied a permit until such time as the applicant appears before department officials for the purpose of reviewing the citation(s) issued. The secretary, after reviewing the proceedings, may issue or deny the permit.

6. Permits shall not be issued to any applicant who within three years of the date of his/her application, has been convicted or pled guilty to a class 2 fish or game violation or greater, as defined in the laws pertaining to wildlife and fisheries.

7. Applicants convicted of, or pleading guilty to two or more class 2 fish or game violations or greater within five years of the application date shall not receive a permit.

AUTHORITY NOTE: Promulgated in accordance R.S. 56:22, 56:326.3 and R.S. 56:402.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 13:502 (September 1987), amended LR 18:294 (March 1992), LR 40:548 (March 2014), LR 40:1946 (October 2014).

§158. False River, Trammel Nets, Gill Nets and Fish Seines

A. Prohibits the use of trammel and gill nets in False River, Pointe Coupee Parish, Louisiana, except their use will be allowed for the legal harvest of commercial fish during a special recurring trammel and gill netting season to commence each year at sunrise on October 1 and close at sunset on the last day of February the following year. The use of fish seines is prohibited and there is no season.

B. The trammel and gill nets allowed during the special recurring season shall have a minimum mesh size of 3 1/2" square (7" stretched) or greater.

C. Commercial fishing will be allowed only during daylight hours except that gear can remain set overnight but fish captured shall be removed during daylight hours only.

D. Commercial fishing with trammel and gill nets will be allowed on False River Lake only during the open season and only by licensed commercial fishermen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:22(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 38:1732 (July 2012), amended LR 40:1947 (October 2014).

§163. Lake Providence, Gill Nets and Trammel Nets

A. Prohibits the use of gillnets and trammel nets in Lake Providence, East Carroll Parish, Lake Providence, Louisiana, except their use will be allowed for the legal harvest of commercial fish during a special recurring trammel and gill netting season to commence each year at sunrise on October 1 and close at sunset on the last day of February the following year.

B. The trammel and gill nets allowed during the special recurring season shall have a minimum mesh size of 3 1/2-inch bar and 7 inches stretched.

C. Said net may remain set overnight, but fish captured may be removed during daylight hours only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:22 and 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:294 (March 1992), amended LR 40:1947 (October 2014).

Billy Broussard
Chairman

1410#034

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Film and Entertainment Industry Animal Permits
(LAC 76:V.133)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission has amended rules and regulations governing the possession of Louisiana wildlife for the film and entertainment industry.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 1. Wild Quadrupeds
§133. Film/Entertainment Industry Animal Permit

A. Purpose

1. The purpose of this Section is to establish regulations for the possession, purchase, and educational exhibition of Louisiana wildlife to be used in the movie, film, entertainment, and educational industry. These regulations provide and establish general rules regarding permit requirements, fees, animal origin, purchase and use of animals, holding pen specifications, travel enclosure requirements, and reporting requirements.

B. Definitions

Bill of Sale—an itemized invoice or receipt on a legitimate business form from a licensed business showing the animal purchased, the date of purchase, and the signature and contact information for the person selling the animal

Bona Fide Resident—any person who has resided in the state of Louisiana continuously during the 12 months immediately prior to the date on which he applies for this permit and who has manifested his intent to remain in this

state by establishing Louisiana as his legal domicile as demonstrated with all of the following, as applicable.

a. If registered to vote, he is registered to vote in Louisiana.

b. If licensed to drive a motor vehicle, he is in possession of a valid Louisiana driver's license

c. If owning a motor vehicle located within Louisiana, he is in possession of a Louisiana registration for that vehicle.

d. If earning an income, he has filed a Louisiana state income tax return and has complied with state income tax laws and regulations.

Department or *LDWF*—the Louisiana Department of Wildlife and Fisheries.

Escape Plan—a written plan of actions, individuals, and equipment to be utilized by the permittee in the event that any permitted animal escapes from confinement, either at the permanent holding facility of the permittee, while the animal is in transport, or when the animal is being utilized in a public venue or at any type of film/entertainment industry location.

Film/Entertainment Industry—live or recorded activity or events of a temporary nature involving scripted and/or unscripted dialogue and/or action for the purpose of amusement, marketing, promoting, entertainment, or education. Includes audio, video, film, streaming, and live performances on constructed sets, at studios, or on location. Does not include rodeos, zoos, or circuses.

Game Breeder—a person who possesses a valid *game breeder* permit from LDWF.

Humane Care—care of animals including, but not limited to, the provision of adequate heat, ventilation, sanitary shelter, and wholesome and adequate food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed. Inhumane care includes any act, omission, or neglect, which causes unjustifiable physical pain, suffering, or death to any living animal.

LDWF-Approved Applicant—an individual who has had no felony convictions, no major wildlife or fisheries violations during the past 3 years, who has a minimum of 5 years of verifiable film/entertainment industry experience, and who is at least 21 years old. Verifiable experience requires a resume detailing at least 5 years of professional, documented animal training for film/entertainment industry activities within the previous 10 years.

Louisiana Wildlife—all tetrapod species, excluding domestic dogs (*Canis familiaris)* and domestic cats (*Felis catus)*, with a presently or historically free-ranging, reproducing population within the state boundary of Louisiana. For migratory wildlife, timing of reproduction does not necessarily have to occur within Louisiana to be considered *Louisiana wildlife*.

Nongame Quadruped Breeder—a person who possesses a valid *nongame quadruped breeder* permit from LDWF.

Permittee—any individual who has obtained a valid film/entertainment industry permit from LDWF.

Person—unless specifically provided for otherwise, the term *person*, for any *person* required to be licensed pursuant to this part, shall mean an individual and shall not include any type of association, corporation, partnership, or other type of legal entity recognized by law.

Possess—in its different tenses, the act of having in possession or control, keeping, detaining, restraining, holding as owner, or as agent, or custodian for another.

Rabies Vector Species—mammalian species defined by LDWF as potential carriers of the rabies virus including, but not limited to, raccoons, foxes, coyotes, skunks, and bats.

Subpermittee—person authorized to conduct activities under the supervisory responsibility of an individual who possesses a current and valid film/entertainment industry animal permit.

Supervisory Responsibility—to direct actions and accept responsibility for the actions of a named individual engaged in film/entertainment industry animal permit activities.

Take—in its different tenses, the attempt or act of hooking, pursuing, netting, capturing, snaring, trapping, shooting, hunting, wounding, or killing by any means or device.

Transport—in its different tenses, the act of shipping, attempting to ship, receiving or delivering for shipment, *transporting*, conveying, carrying, or exporting by air, land, or water, or by any means whatsoever.

C. Permits

1. It shall be unlawful for any person to keep, hold or possess in captivity any Louisiana wildlife intended for use in the film/entertainment industry or otherwise solicit or engage in providing Louisiana wildlife to the film/entertainment industry without first obtaining a film/entertainment industry animal (FEIA) permit from LDWF.

2. A film/entertainment industry animal permit authorizes the permittee to transport, possess, trade, barter, or transfer Louisiana wildlife for any permitted, legal purpose relative to that animal's film/entertainment industry use, training, or physical welfare. Except, no rabies vector species may be traded, bartered, or transferred, either temporarily or otherwise, to any out of state location or individual.

3. Possession of an FEIA permit does not exempt the permit holder from other local, state, or federal permit requirements, including, but not limited to, obtaining a valid United States Fish and Wildlife Service (USFWS) permit to possess or provide film/entertainment industry animals which are currently listed in the Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, or the Endangered Species Act.

4. No Louisiana wildlife species may be possessed by the applicant prior to a FEIA permit being granted by LDWF, unless those animals were legally and previously possessed by the applicant.

D. Permit Requirements

1. Application for a film/entertainment industry animal permit shall be made on an official application form provided by the Department of Wildlife and Fisheries. FEIA permits will expire on December 31 of each year, and a renewal request should be received by that date.

2. An applicant for this permit must be a bona fide Louisiana resident who has a minimum of 5 years of verifiable film/entertainment industry experience, and who is at least 21 years old. Verifiable experience requires a resume detailing at least 5 years of professional, documented animal training for film/entertainment industry activities within the

previous 10 years. This verifiable resume must be submitted as part of the application.

3. An applicant for a FEIA permit must provide verification of having access to veterinary services provided by a Louisiana licensed veterinarian by submitting a statement of veterinary support form provided by LDWF.

4. All facilities where animals will be housed, maintained, or trained shall be inspected by LDWF prior to issuance of an initial FEIA permit.

5. Anyone who has been convicted of a class II or greater wildlife violation in Louisiana, or the equivalent in another state within the past five years, or has been convicted of a felony in Louisiana or another state, shall not be eligible for a FEIA permit.

6. An applicant must possess a U.S. Department of Agriculture Animal Welfare Act class C license and submit a copy of this license as part of the application for an FEIA permit.

7. The application must contain a proposed animal inventory list including species and number of animals to be possessed under the permit. Once a FEIA permit has been granted by LDWF, the applicant must submit and maintain a revised, up to date animal inventory list to LDWF within 48 hours of changes (additions or deletions) to the animal inventory list, as detailed below.

8. The application must contain a written escape plan as defined above. The escape plan shall contain a permanent written log sheet that describes each escape event.

9. The application must contain a signed waiver statement holding the Department of Wildlife and Fisheries and its employees harmless for liability as a result of issuing an FEIA permit. FEIA permits will only be issued to those applicants who are willing to accept full responsibility and liability for any damages or injuries resulting from their animals or from any injuries that occur during educational or entertainment activities relating to the FEIA permit.

E. General Rules

1. This permit is valid only for Louisiana wildlife species.

2. Potentially dangerous quadrupeds, big exotic cats, and non-human primates, as listed in R.S. 56:6 and LAC 76.V.1.115 are specifically prohibited from being permitted under this permit, and cannot be possessed by an FEIA permittee.

3. Louisiana wildlife permitted under these regulations cannot be taken from the wild by the permittee, and cannot be released back into the wild. Permitted animals must have been obtained from a licensed trapper, a licensed game breeder, or a licensed nongame quadruped breeder. The source of each permitted animal must be verifiable via a bill of sale or sales invoice.

4. Rabies vector species shall be vaccinated by a licensed veterinarian with a killed rabies vaccine, and proof of such vaccination shall be retained by the permittee in the permanent records of that animal. Annual renewal of rabies vaccinations is required for any permitted rabies vector species animal.

5. Each permitted animal must have an official health certificate signed by a Louisiana licensed veterinarian. This health certificate shall reference a specific microchip identification tag that has been surgically implanted into the animal by the licensed veterinarian. Veterinary health inspections on any and all animals possessed under the film/entertainment industry animal permit must be performed at least annually.

6. Per LAC 76:V.1.113.D.6, no person shall transport, possess, purchase, or sell any live coyotes or foxes taken outside the state of Louisiana. Therefore, any live coyote or live fox submitted for permitting under these film/entertainment industry animal permit regulations must have been taken from within the state of Louisiana. Proof of Louisiana origin (bill of sale or sales invoice from a licensed Louisiana trapper or nongame quadruped breeder) must be kept on file by the permittee during the life of the animal, and made available for inspection when requested by an authorized LDWF representative.

7. Permittee must allow inspections of premises by Department of Wildlife and Fisheries employees for purposes of enforcing these regulations. Inspections may be unannounced and may include, but are not limited to, pens, stalls, holding facilities, records, and examination of animals as necessary to determine species identification, sex, health and/or implanted microchip number.

8. Whenever an animal is present, humane care must be provided in all FEIA facilities, film/entertainment industry locations and venues, public entertainment/educational venues, permanent and temporary housing enclosures, and during transport.

9. Animals held under this permit may be utilized in the film/entertainment industry, displayed for educational purposes, or otherwise displayed in a public entertainment/educational venue provided that the specific animal(s) being displayed is included in the most current animal inventory list submitted to LDWF by the applicant. Except, no animal may be used in any type of wrestling, photography opportunity with a patron, or any activity which allows physical contact between the animal and the general public.

10. Permitted animals may be displayed at public entertainment or educational venues by the permitee or his or her subpermitees outside of a secure enclosure provided that these animals are under constant control and immediate physical constraint of the permitee or subpermitee, such constraint precluding any chance of escape or physical contact, intentional or accidental, with an audience member or individual other than the permitee or a subpermitee.

11. Holding Pens and Enclosure Requirements

a. FEIA permittees should recognize and provide for any unique requirements of the species they possess. Permitted animals must be kept in a sanitary and safe condition and may not be kept or utilized in a manner that results in the maltreatment or neglect of the permitted animal.

b. FEIA permitted facilities and enclosures must provide adequate quantities of palatable food that is nutritiously sufficient to ensure normal growth and body maintenance.

c. FEIA permitted facilities and enclosures must provide adequate water which is fresh, uncontaminated, and available at all times. Drinking water must be provided in clean containers on a daily basis, unless the unique requirements of the permitted animal requires additional

drinking water be made available. Enclosures must have adequate surface water drainage, and hard floor surfaces must be scrubbed and disinfected as needed.

d. Fecal and food waste must be removed from enclosures daily and disposed of in a manner that prevents noxious odors and insect infestations.

e. FEIA permitted enclosures must provide adequate space for movement, postural adjustments, and resting places. The pen dimensions and specifications described herein are minimum requirements for permanent enclosure and exhibit facilities. These are minimum standards, and the optimum conditions for most animals would include dimensions several times greater than those cited:

i. waterfowl (ducks, geese, swans and coots endemic to or migratory through Louisiana):

(a). ducks and coots—100 square feet with 25 percent in water area for up to four birds; increase pen size by 25 square feet for each additional bird with one-fourth of this increase being in water area;

(b). geese—150 square feet per goose;

ii. doves (order columbiformes endemic to Louisiana except rock dove, i.e., domestic pigeon):

(a). single bird—3 feet by 2 feet by 5 feet high;

(b). community group—large enough to fly or at least 8 feet in diameter;

iii. game birds (ringneck pheasant, chukar, and bobwhite quail endemic to Louisiana), 20 square feet per bird;

iv. hawks, falcons—refer to federal raptor facilities specifications and LDWF falconry regulations;

v. squirrels (gray, fox, and flying squirrels endemic to Louisiana):

(a). single animal—3 feet by 3 feet by 4 feet high;

(b). additional squirrels—add 6 inches per animal to total cage length per additional animal; enclosures must contain tree trunks, limbs, and vines for climbing and a nest or den box for sleeping;

vi. rabbits (cottontail and swamp rabbits endemic to Louisiana):

(a). single animal—6 feet by 3 feet by 3 feet high with gnawing logs and a sleeping den or nest box;

(b). additional rabbits—add 1 foot per animal to total cage length;

vii. muskrat, opossum, mink—3 feet by 3 feet by 2 feet high with a den box for sleeping;

viii. nutria, raccoon, skunk—4 feet by 4 feet by 2 feet high with a den box for sleeping (raccoon and skunk), a dirt mound for burrow digging (nutria), aquatic habitat for nutria and/or tree branches, trunks, limbs, and vines for climbing (raccoon);

ix. foxes, bobcats, beavers, otters—10 feet by 10 feet x 3 feet high with a den box for sleeping (fox and bobcat), scratching post and elevated perch (bobcat), and appropriate aquatic (swimming) habitat for beavers and otters;

x. coyotes—12 feet by 12 feet by 3 feet with a den box for sleeping;

xi. lizards—minimum cage size shall be based relative to the length of the body and tail, and shall be at least 1.5 times that length on the longest side, 1 times on its shortest side, and 1.2 times in height;

xii. snakes—minimum cage size shall be based relative to the length of the body and tail, and shall be ¾ that length on its longest side, 1/3 that length on its shortest side and in height;

xiii. turtles and tortoises—minimum cage or aquarium size shall be based on straight-line shell length, and shall be 5 times that length on its longest side, 3 times on its shortest side, and 2 times in height. Aquaria must contain a basking platform.

F. Reporting and Renewal Requirements

1. An annual report of activities completed under this permit shall be required when submitting a request for permit renewal. This annual report shall be completed on official forms provided for this purpose by LDWF.

2. Application for renewal must contain copies of any and all USDA Animal Welfare Act inspections performed during the previous year. Proof of current USDA class C license must also accompany renewal application.

3. Certificate of veterinary inspection or other proof of veterinary health examinations for any and all animals kept under this permit must be submitted with renewal application.

4. Escape plan log sheet covering the previous year's activities must accompany renewal application.

5. A report detailing injuries to permitee or subpermitees involving an animal kept under this permit, or an injury to any animal kept under this permit during the previous year must accompany renewal application. Reportable injuries include those occurring during housing at primary facility, transport, at temporary housing facilities, and during film/entertainment industry activities. Report must contain narrative describing circumstances surrounding the injury, identification of remedial measures, conclusive identification of animal(s) involved, and disposition of said animals. For the permitee or subpermitees, a reportable injury includes a bite, scratch, or claw wounding, no matter how minor, or any other type of injury requiring first aid or more serious medical intervention. For an animal kept under this permit, a reportable injury is one that causes unjustifiable physical pain, suffering, or death to any living animal, including, but not limited to, any wound, bite, broken bone, damage to organ or tissue, or environment-related stress that requires first aid, veterinary attention, euthanasia, or removal from availability for use in film/entertainment industry activities.

6. At least 24 hours prior to transporting any permitted animal to a film/entertainment industry venue, public entertainment/educational venue or job location, the FEIA permittee shall notify LDWF with details of the job or appearance. These details shall include date, location, type of job, duration of job, travel times, specific animals involved, the permitee or subpermitee involved, and any overnight housing/caging facilities to be used. Contact information for the agent or contractor should also be included.

7. Written notification of any animal escape must be submitted to LDWF within 48 hours of detection of the escape event. A copy of the escape log sheet shall be considered proper and sufficient notification. This

notification must include date, time, location, the species of animal that escaped, a description of actions taken to recover the escaped animal, and the outcome of the event. Repeated escapes (more than three per year) may result in suspension of the permit until remedial solutions are added to the escape plan. Failure to notify LDWF within the 48 hour time frame of any animal escape may result in immediate and/or permanent loss of this permit.

8. Once an FEIA permit has been granted by LDWF, the permittee shall submit and maintain an up to date accurate written inventory list of animals in possession. This inventory list shall include species, sex, and microchip number of specific animals that are actually in possession of the permittee. Individual animals must be identifiable through microchip implantation. Permitee shall maintain records of microchip numbers and make such records available to LDWF upon demand. LDWF must be notified in writing within 48 hours of any changes (either additions or deletions) to this animal inventory list. Deletions must be justified and contain the disposition of the animal. Additions must contain a bill of sale documenting the source of the animal. Alterations to the list of species being kept by a permitee are subject to approval at the discretion of LDWF, and may require re-inspection of facilities. Failure to maintain an accurate, up to date animal inventory list and submit this list to LDWF in a timely basis may subject the permittee to loss or suspension of this permit.

9. Any injury (bite, scratch, or claw wounding, no matter how minor, or any other type of injury requiring first aid or more serious medical intervention), accidentally or otherwise incurred by an audience member or any individual of the general public, that is caused by an animal possessed by an FEIA permit holder shall be immediately reported in writing to LDWF within 48 hours of the occurrence. Such injuries may subject the permittee to loss of the FEIA permit.

10. Any injury (bite, scratch, or claw wounding, no matter how minor, or any other type of injury requiring first aid or more serious medical intervention), accidentally or otherwise incurred by an audience member or any individual of the general public, that is caused by an unpermitted animal or an animal that was not specifically listed in the permittee's most recent animal inventory list, may result in immediate and permanent loss of this permit.

11. Any unreported injury (bite, scratch, or claw wounding, no matter how minor, or any other type of injury requiring first aid or more serious medical intervention), accidentally or otherwise incurred by an audience member or any individual of the general public, that is caused by a permitted or unpermitted animal may result in immediate and permanent loss of this permit and possible criminal prosecution.

G. Penalties for Violation

1. Unless another penalty is provided by law, violation of these regulations will be a class two violation as defined in title 56 of the *Louisiana Revised Statutes*. In addition, upon conviction for violation of these regulations, the FEIA permit associated with the facility or permittee may be revoked, and all animals housed within the facility may be seized by LDWF and forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:105(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 40:1947 (October 2014).

Billy Broussard
Chairman

1410#032

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry
Beef Industry Council

Beef Promotion and Research Program
(LAC 7:V.Chapter 27)

Editor's Note: This Notice of Intent, originally printed in the August 20, 2014 *Louisiana Register* on pages 1559-1561, is being reprinted to correct submission errors.

Under the enabling authority of R.S. 3:2054(E), and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Beef Industry Council (LBIC) intends to promulgate these rules and regulations ("the proposed action") in order to establish rules and regulations for its own government and for administration of the affairs of the council.

This proposed action is required because the October, 2013 Louisiana Supreme Court ruling in Krielow v. Louisiana Department of Agriculture and Forestry, which declared R.S. 3:3534 and R.S. 3:3544, statutes that allow a voting majority of rice producers to levy an assessment on all producers, to be unconstitutional, calls into question the constitutionality of sections 3:2055 through 2062 of the *Louisiana Revised Statutes*. The *Revised Statutes* established, by referendum vote, the Louisiana Beef Promotion and Research Program (LBPRP) and the LBIC. Among other things, these statutes included procedures for the governance and administration of the LBIC.

Louisiana's cattle industry is essential to the health, safety and welfare of the citizens of this state. In 2004, Louisiana's cattle industry was the second-largest agricultural sector with about $365 million in sales. The LBPRP and the LBIC promote the growth and development of the cattle industry in Louisiana by research, advertisement, promotions, education, and market development, thereby promoting the general welfare of the people of this state.

The LBRPR and the LBIC are the mechanisms through which the state's cattle production and feeding industry develop, maintain, and expand the state, national, and foreign markets for cattle and beef products produced, processed, or manufactured in this state and through which the cattle production and feeding industry of this state contributes otherwise to the development and sustenance of a Louisiana coordinated promotion program and nationally coordinated programs of product improvement through research in consumer marketing via the accepted industry organization of the Cattleman's Beef Promotion and Research Board and its Beef Industry Council, thus benefiting the entire United States cattle industry and the American public.

This proposed action is required in order to provide a means for the LBIC to continue to govern and administer the affairs of the council, and to allow the council to continue, to the maximum extent possible within the constraints announced in Krielow, the LBIC's support of the program and protection of the huge investment that has been made, thus insuring the marketability of Louisiana beef, until such time as there is a permanent legislative solution. Failure to promulgate these rules would jeopardize the significant investment to promote the growth and development of Louisiana's cattle industry since the program's inception, and would pose an imminent peril to the health and welfare of the Louisiana's citizens and the state's cattle industry.

This Rule shall have the force and effect of law five days after its promulgation in the official journal of the state of Louisiana.

Title 7
AGRICULTURE AND ANIMALS
Part V. Advertising, Marketing and Processing
Chapter 27. Beef Promotion and Research Program

§2701. Purpose

A. The purpose of this Chapter is to provide for the government and for the administration of the affairs of the Louisiana Beef Industry Council.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Beef Industry Council, LR 41:

§2703. Powers and Duties of the Council; Quorum

A. The council shall:

1. receive and disburse funds, as prescribed elsewhere in this Chapter, to be used in administering and implementing the provisions and intent of this Chapter;

2. meet regularly, not less often than once in each calendar quarter or at such other times as called by the chairman, or when requested by six or more members of the council;

3. maintain a record of its business proceedings in accordance with R.S. 44:36 and the Louisiana Beef Industry Council retention schedule;

4. maintain a detailed record of its financial accounts in accordance with R.S. 44:36 and the Louisiana Beef Industry Council retention schedule;

5. prepare periodic reports and an annual report of its activities for the fiscal year;

6. prepare periodic reports and an annual accounting for the fiscal year of all receipts and expenditures of the council and shall retain a certified public accountant for this purpose;

7. appoint a licensed banking institution as the depository for program funds and disbursements;

8. maintain frequent communications with officers and industry representatives of the Cattlemen's Beef Promotion and Research Board.

B. Six members of the council shall constitute a quorum for the purpose of conducting business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Beef Industry Council, LR 41:

§2705. Use of Funds

A. The council may expend the funds available to it to:

1. contract for scientific research with any accredited university, college, or similar institution and enter into other contracts or agreements which will aid in carrying out the purposes of the program, including cattle and beef promotion, consumer market development, research advertising and, including contracts for the purpose of acquisition of facilities or equipment necessary to carry out purposes of the program;

2. disseminate reliable information benefiting the consumer and the cattle and beef industry on such subjects as, but not limited to, purchase, identification, care, storage, handling, cookery, preparation, serving, and the nutritive value of beef and beef products;

3. provide information to such government bodies as requested on subjects of concern to the cattle and beef industry and act jointly or in cooperation with the state or federal government and agencies thereof in the development or administration of programs deemed by the council to be consistent with the objectives of the program;

4. cooperate with any local, state, regional, or nationwide organization or agency engaged in work or activities consistent with the objectives of the program;

5. pay funds to other organizations for work or services performed which are consistent with the objectives of the program.

B. All funds available to the council shall be expended only to effectuate the purposes of this Chapter and shall not be used for political purposes in any manner. A fiscal year-end audited report shall be made available annually to the state conventions of the Louisiana Cattlemen's Association and the Louisiana Farm Bureau Federation, and shall be posted on the Division of Administration website in accordance with R.S. 49:1301 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Beef Industry Council, LR 41:

§2707. Additional Powers of Council

A. The council may:

1. sue and be sued as a council, without individual liability of the members for acts of the council when acting within the scope of the powers of this Chapter, and in the manner prescribed by the laws of this state;

2. appoint advisory groups composed of representatives from organizations, institutions, governments, or business related to or interested in the welfare of the cattle and beef industry and consumers;

3. employ subordinate officers and employees of the council and prescribe their duties and fix their compensation and terms of employment;

4. accept grants, donations, contributions, or gifts from any source, but only if the use of such resources is not restricted in any manner which is deemed inconsistent with the objectives of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2051, 2052, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Beef Industry Council, LR 41:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the: (1) stability of the family; (2) authority and rights of parents regarding the education and supervision of their children; (3) functioning of the family; (4) family earnings and family budget; (5) behavior and personal responsibility of children; or (6) ability of the family or a local government to perform the function as contained in the proposed action.

Poverty Impact Statement

It is anticipated that the proposed action will have no significant effect on: (1) household income, assets, and financial security; (2) early childhood or educational development; (3) employment and workforce development; (4) taxes and tax credits; or (5) child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

It is anticipated that the proposed action will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on: (1) the staffing level requirements or qualifications required to provide the same level of service; (2) the total direct and indirect effect on the cost to the providers to provide the same level of service; or (3) the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Robert Joyner, Executive Director of the Louisiana Beef Industry Council; telephone (225) 343-3491; fax # (225) 336-0002; mailing address, 4921 I-10 Frontage Road, Port Allen, LA 70767. The written submissions must be received no later than 4 p.m. on November 10, 2014. No preamble regarding these proposed regulations is available.

Dale Cambre
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Beef Promotion and Research Program

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

The proposed action is not anticipated to have a direct material effect on state or local governmental unit expenditures.

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

The proposed action is not anticipated to have a direct material effect on state or local governmental revenues. The proposed action will adopt Chapter 27 of LAC 7:V. in order for the Louisiana Beef Industry Council (LBIC) to establish rules and regulations for its own governance and for administration of the affairs of the Council.

The proposed action is being taken because the October, 2013 Louisiana Supreme Court ruling in Krielow v. Louisiana Department of Agriculture and Forestry, which declared R.S. 3:3534 and R.S. 3:3544 to be unconstitutional, allow a voting majority of rice producers to levy an assessment on all producers. This ruling calls into question the constitutionality of sections 3:2055 through 2062 of the Louisiana Revised Statutes. The Revised Statutes established, by referendum vote, the Louisiana Beef Promotion and Research Program and the LBIC. These statutes included procedures for the governance and administration of the LBIC.

The proposed action is required to provide for the LBIC to continue to govern and administer the affairs of the Council, and to allow the Council to continue, to the maximum extent possible within the constraints announced in Krielow, the LBIC's support of the program and protection of the huge investment that has been made, thus insuring the marketability of Louisiana beef.

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

The non-governmental group directly affected by the proposed action is the cattle industry in the State of Louisiana. The benefit to the cattle industry is that the proposed action provides for the LBIC to continue to govern and administer the affairs of the Council, and to allow the Council to continue, to the maximum extent possible within the constraints announced in Krielow, the LBIC's support of the program and protection of the huge investment that has been made, thus insuring the marketability of Louisiana beef.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Dane Morgan Assistant Commissioner 1410#006	Evan Brasseaux Staff Director Legislative Fiscal Office

NOTICE OF INTENT

Department of Culture, Recreation and Tourism
Seafood Promotion and Marketing Board

Seafood Promotion and Marketing (LAC 76:I.Chapter 5)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:578.2(B) and R.S. 56:578.3, notice is hereby given that the Louisiana Seafood Promotion and Marketing Board has approved and proposes to amend its rules for internal governance. The proposed revisions were made to be consistent with applicable state law, including Act No. 228 of the Regular Session 2013, to update its procedures, and the names of standing committees.

Title 76
WILDLIFE AND FISHERIES
Part I. Wildlife and Fisheries Commission and Agencies Thereunder
Chapter 5. Seafood Promotion and Marketing Board

§501. Bylaws

A. The specific location of the principal office of the Louisiana Seafood Promotion and Marketing Board as a part of the Office of the Secretary of the Department of Culture, Recreation and Tourism shall be in Baton Rouge, Louisiana as established by title 56 of the *Louisiana Revised Statutes*.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§503. Meetings

A. Regular Meetings. The regular meetings of the board shall be as set at any regular or special meeting by resolution adopted by a majority of the members present.

B. Special Meetings

1. Special meetings of the board may be called by the chairman, at his discretion, and shall be called by the chairman upon written request of any eight members. The notice of each special meeting shall state the purpose for which it is called, and only those matters shall be considered that have been included in the call, unless the board agrees to take up other matters by unanimous vote.

2. The chairman shall cause written notices of the time and place of special meetings to be e-mailed, to each member, at the addresses as they appear in the records of the board, in accordance with the open meetings law.

C. Quorum; Minutes

1. The attendance of eight members at any regular meeting shall constitute a quorum for the transaction of all business.

2. Minutes will be available to board members not later than the next regular meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§505. Election of Officers and Appointments

A. Officers shall be elected annually at the first regular meeting held in the third quarter of each state fiscal year, at which the members shall elect, from among their own number, a chairman, a vice-chairman, who shall also be the chairman-elect, and a secretary-treasurer to hold office for one year, or until their successors are elected. No member shall be elected as an officer until such member has served at least one year on the board.

B. …

C. No member elected chairman shall serve consecutive terms and no member may serve as chairman more than two terms. No chairman shall serve as vice-chairman in the term following his term as chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§507. Duties of the Chairman

A. The powers and duties of the chairman shall be:

1. to preside as chairman at al meetings of the board, with the right to vote on all motions;

2. to see that the laws of the state, pertaining to the purposes and functions, of the board, the motions of the board and its policies are faithfully observed and executed;

3. to call special meetings of the board, at his discretion, or upon the written request of eight members;

4. - 6. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Louisiana Seafood Promotion and Marketing Board, LR 41:

§509. Duties of the Vice-Chairman

A. Whenever the chairman is absent from any regularly scheduled meeting, his duties shall be performed by the vice-chairman. Whenever the chairman is absent from a special meeting called by him, upon his own initiative, or upon written request of eight board members, his duties shall be performed by the vice-chairman. The vice-chairman may not assume the duties of the chairman for the purpose of calling a special meeting when the chairman is temporarily absent from the state, or when the chairman is temporarily incapacitated through illness, or otherwise, unless the chairman or eight members, direct the vice-chairman to assume the office of chairman for the purpose of calling such special meeting.

B. …

AUTHORITY NOTE: Promulgated in accordance R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Louisiana Seafood Promotion and Marketing Board, LR 41:

§511. Duties of Secretary-Treasurer

A. To serve as chairman of Finance Committee.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:126 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§513. Board Committees

A. …

B. The standing committees of the board are:

1. executive, which shall consist of the elected officers of the board;

2. finance;

3. marketing;

4. legislative; and

5. education.

C. The member appointed in accordance with R.S. 56:578.2(A)(2)(g) to serve as a marketing specialist shall chair the marketing committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§515. Order of Business

A. The chairman of the board, in consultation with the executive director, shall prepare and submit to the board an agenda covering the items of business to be considered and acted upon at each meeting of the board. The agenda shall be submitted to the board seven days before a regular meeting. The board may consider such matters as may properly be brought before it.

B. In accordance with R.S. 42:14(D), the board shall provide an opportunity for public comment at any point in the meeting prior to action on an agenda item upon which a vote is to me taken. Public comment is restricted to matters included on the agenda. Public comment is limited to three minutes for each speaker on each matter unless additional time is allowed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§519. Amendment of Bylaws

A. Amendments to these bylaws may be adopted at any regular meeting of the board by a majority vote of the board members present at the meeting. However, no such alteration or amendment shall be considered unless:

1. notice of the intention to amend the bylaws shall have been given in writing at a previous meeting of the board; and

2. a draft of the proposed amendment shall have been sent to each member of the board at least 48 hours in advance of the meeting at which the action of such alteration or amendment is to be taken.

B. In accordance with R.S. 56:578.2, the amendments adopted by the board shall be amended or promulgated by rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§520. Election

A. The election of the chairman, vice-chairman, secretary-treasurer will be held at the first regular meeting held in the third quarter of each state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:578.2.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

§521. Disqualification

A. The board, by a two-thirds vote of the members present, may remove a member for cause, including but not limited to abandonment of office, conviction of a felony, or a plea of nolo contendere thereto, malfeasance, or gross misconduct in office.

B. A board member may be deemed to have abandoned his office upon failure to attend any three consecutive board meetings or any three meetings in a calendar year, unless the absence was excused by the chairman in response to the member's request.

AUTHORITY NOTE: Promulgated in accordance R.S. 56:578.2 and R.S. 56:578.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Board of Seafood Promotion and Marketing, LR 11:127 (February 1985), amended by the Department of Culture, Recreation and Tourism, Seafood Promotion and Marketing Board, LR 41:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments to Karen Profita, Executive Director, Louisiana Seafood Promotion and Marketing Board, 1051 North Third Street, 3rd Floor, Baton Rouge, LA 70802. All comments must be submitted by 4:30 p.m., November 10, 2014.

Karen Profita
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Seafood Promotion and Marketing

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

There are no anticipated costs or savings to state or local governmental entities as a result of the proposed rule. The rule seeks to amend the bylaws of the Louisiana Seafood Promotion and Marketing Board (LAC 76:1, Chapter 5), which have not been updated since 1985.

The proposed rule also reflects changes in applicable state law pursuant to Act 228 of 2013 and updates the names of the Board's committees and internal procedures.

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

There will be no effect on revenue collections of state or local governments as a result of the implementation of this rule.

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

There should be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment as a result of the implementation of this rule.

Karen Profita
Executive Director
1410#045

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 134—Tuition Donation Rebate Program
(LAC 28:CLV.103, 303, 901, and 1303)

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*: §103, Definitions; §303, Awarding of Scholarships; §901, General Audits and Financial Reviews; and §1303, Annual Report on Program Implementation. The proposed revisions will effectuate the provisions of Act 424 of the 2014 Regular Legislative Session regarding the definition of an eligible student, portability of scholarships, audit requirements, and reporting student testing results.

Title 28
EDUCATION
Part CLV. Bulletin 134—Tuition Donation Rebate Program

Chapter 1. General Provisions

§103. Definitions

A. - A.2. …

* * *

Qualified Student—a child who is a member of a family that resides in Louisiana with a total household income that does not exceed an amount equal to 250 percent of the federal poverty level based on the federal poverty guidelines established by the federal Office of Management and Budget and is a student who:

i. is entering kindergarten for the first time;

ii. was enrolled in a public school in Louisiana on October 1 and February of the most recent school year; or

iii. received a scholarship from a school tuition organization or the Student Scholarships for Educational Excellence Program for the previous school year.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1024 (April 2013), amended LR 41:

Chapter 3. School Tuition Organizations

§303. Awarding of Scholarships

A. - B. …

C. School tuition organizations shall award scholarships to qualified students on a first-come, first-serve basis, with priority given to students who received a scholarship from the school tuition organization or the Student Scholarships for Educational Excellence Program in the previous year.

D. - F.4. …

G. Scholarships granted to qualified students shall be portable during the school year and can be used at any qualifying school served by the school tuition organization that accepts a qualified student. If the parent of a qualified student who is receiving a scholarship desires the student to

move to a new qualified school served by the school tuition organization during a school year, the scholarship amount may be prorated.

H. - I.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 39:1025 (April 2013), amended LR 40:499 (March 2014), LR 41:

Chapter 9. Review of School Tuition Organizations

§901. General Audits and Financial Reviews

A. The LDE shall annually conduct an audit of a school tuition organization. The LDE shall bar a school tuition organization from participating in the rebate authorized under this Section if the school tuition organization intentionally or substantially fails to comply with the requirements of this Rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1027 (April 2013), amended LR 41:

Chapter 13. Testing

§1303. Annual Report on Program Implementation

A. - B. …

C. The LDE shall publically report state test scores for each student receiving a scholarship the entirety of the students participating in the tuition donation rebate program in accordance with the requirements of the federal FERPA statute (20 U.S.C. 1232g) and regulations (34 CFR 99.1 et seq.). However, the LDE shall not include the name or any other identifying information for individual students

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6301.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 39:1029 (April 2013), amended LR 41:

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? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this Section, the word "poverty" means living at or below one hundred percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? 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.

Provider Impact Statement

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

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

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

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., November 8, 2014, to Kimberly Tripeaux, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Kimberly Tripeaux
Interim Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 134—Tuition Donation Rebate Program

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

The proposed policies will have an indeterminable effect to the state. The proposed revisions will effectuate the provisions of Act 424 of the 2014 Regular Legislative Session regarding the definition of an eligible student, portability of scholarships, audit requirements, and reporting student testing results. The policy allows for a student participating in the Student Scholarships for Educational Excellence Program (SSEEP) to move to the tuition donation program, freeing up a slot for a

new student in the SSEEP. These new SSEEP students otherwise enrolled in public schools could result in a reduction in the MFP. The overall impact will be determined by the level of donations to participating school tuition organizations, the number of new slots created in the SSEEP and the number of students moving out of the MFP into these new SSEEP slots.

Additionally, there could be an indeterminable decrease in state revenues if additional students participate in the tuition donation program as donations made under this program are eligible for taxpayer rebates.

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

There is an indeterminable reduction to MFP funding for local school districts to the extent an existing student moves out of the MFP to the SSEEP.

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

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux	Evan Brasseaux
Deputy Superintendent	Staff Director
1410#014	Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for
School Administrators (LAC 28:CXV.701)

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 741—Louisiana Handbook for School Administrators*: §701, Maintenance and Use of System Records and Reports. The proposed revision is required by the 2014 Regular Session of the Louisiana Legislature. The Louisiana Department of Education is required to develop a system of unique student identification numbers for the purpose of maintaining accurate and current student information. Each local school board is required to assign the unique student identification numbers to all of the students enrolled in public elementary and secondary schools in their respective districts.

Title 28
EDUCATION
Part CVX. Bulletin 741—Louisiana Handbook for School Administrators
Chapter 7. Records and Reports
§701. Maintenance and Use of System Records and Reports

A. - B.2. …

3. By not later than May 1, 2015, the LDE shall develop a system of unique student identification numbers. By not later than June 1, 2015, each local public school board shall assign such a number to every student enrolled in a public elementary or secondary school. Student identification numbers shall not include or be based on Social Security numbers, and a student shall retain his student identification number for his tenure in Louisiana public elementary and secondary schools.

4. Information files and reports shall be stored with limited accessibility and shall be kept reasonably safe from damage and theft.

C. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:93, R.S. 17:411, R.S. 17:415, and R.S. 17:3913

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1268 (June 2005), amended LR 37:1380, 1380 (May 2011), LR 40:764 (April 2014), LR 41:

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? Yes.

Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? 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.

Provider Impact Statement

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

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

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., November 8, 2014, to Kimberly Tripeaux, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Kimberly Tripeaux
Interim Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators

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

The projected cost to the LDOE for modifications to the student data system in order to implement the proposed changes are in excess of $1,000,000 and will be paid for with existing 8g grant funds awarded by BESE. In addition, the policy changes may result in indeterminable costs for local educational agencies, (to be paid with a mix of district and state funds), institutions of higher education (paid from a mix of self-generated and state revenues), as well as for the Board of Regents and the Office of Student Financial Assistance (paid from state funds) should their data system require modifications to accommodate the use of a unique identification number (UID).

The proposed revision is required by the 2014 Regular Session of the Louisiana Legislature and is necessary to strengthen student privacy protections. The Louisiana Department of Education is required to develop a system of unique student identification numbers for the purpose of maintaining accurate and current student information. Each local school board is required to assign the unique student identification numbers to all of the students enrolled in public elementary and secondary schools in their respective districts.

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

There is 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)

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1410#040

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission
Office of Student Financial Assistance

Scholarship/Grant Programs
TOPS Core Curriculum Equivalent
(LAC 28:IV.703)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its scholarship/grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking adds law studies as a course equivalent to world history, western civilization, world geography and history of religion in the TOPS core curriculum for students who graduate from high school during the 2013-2014 academic year (high school).

This rulemaking adds certain courses taught the New Orleans Center for Creative Arts (NOCCA) as course equivalents to designated courses in the TOPS core curriculum for students who graduate from NOCCA. (SG15156NI)

Title 28
EDUCATION
Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs
Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards
§703. Establishing Eligibility

A. - A.5.a.ii.(c). …

* * *

(d).(i). For students graduating in academic year (high school) 2010-2011 through academic year (high school) 2016-17, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	Integrated Science
Algebra I	Algebra I, Parts 1 and 2, Integrated Mathematics I, Applied Algebra I
Applied Algebra IA and IB	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II and III
Algebra II	Integrated Mathematics II
Geometry	Integrated Mathematics III, Applied Geometry

Core Curriculum Course	Equivalent (Substitute) Course
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*, Advanced Math - Pre-Calculus**, Advanced Math - Functions and Statistics***
Chemistry	Chemistry Com
Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit;	Anatomy and Physiology
Fine Arts Survey	Speech III and Speech IV (both units)
Western Civilization	European History
World Geography	AP Human Geography
Civics	AP American Government
*Applied Mathematics III was formerly referred to as Applied Geometry **Advanced Math—Pre-Calculus was formerly referred to as Advanced Mathematics II ***Advanced Math—Functions and Statistics was formerly referred to as Advanced Mathematics II	

(ii). For students graduating in academic year (high school) 2013-2014 only, for purposes of satisfying the requirements of §703.A.5.a.i above, or §803.A.6.a, in addition to the equivalent courses identified in §703.A.5.(a).ii.(d).(i) above, the following course shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses.

Core Curriculum Course	Equivalent (Substitute) Course
World History, Western Civilization, World Geography or History of Religion	Law Studies

A.5.a.ii.(e). - A.5.a.iii.(b). …

* * *

iv. Beginning with academic year (high school) 2013-2014, for purposes of satisfying the requirements of §703.A.5.a.i above, in addition to the courses identified in §703.A.5.a.ii, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses for students of the New Orleans Center for Creative Arts.

Core Curriculum Course	Equivalent (Substitute) Course
English I	NOCCA Integrated English I
English II	NOCCA Integrated English II
English III	NOCCA Integrated English III
English IV`	NOCCA Integrated English IV
Algebra I	NOCCA Integrated Mathematics I
Geometry	NOCCA Integrated Mathematics II
Algebra II)	NOCCA Integrated Mathematics III
Advanced Math–Functions and Statistics	NOCCA Integrated Mathematics IV
Physical Science	NOCCA Integrated Science I
Biology	NOCCA Integrated Science II
Environmental Science	NOCCA Integrated Science III
Chemistry	NOCCA Integrated Science IV
World Geography	NOCCA Integrated History I
Civics	NOCCA Integrated History III
World History	NOCCA Integrated History II
U. S. History	NOCCA Integrated History IV

A.5.b. - J.4.b.ii. …

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 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:2987 (October 2011), LR 38:354 (February 2012), LR 38:3158 (December 2012), LR 39:481 (March 2013), LR 39:2485 (September 2013), LR 40:54 (January 2014), LR 41:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed Rule will have no adverse impact on providers of services for individuals with developmental disabilities as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments on the proposed changes (SG15156NI) until 4:30 p.m., November 10, 2014, to Sujuan Williams Boutté, Ed.D., Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
TOPS Core Curriculum Equivalent

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

In accordance with the requirements of R.S. 17:3048.1.C(2)(e) and with the prior approval of BESE and the concurrence of Regents, the proposed rule change modifies the Scholarship and Grant Program rules to add a listing of New Orleans Center for Creative Arts (NOCCA) courses that are considered equivalent (substitute) courses to the TOPS core curriculum requirements effective for the 2013-2014 high school academic year and thereafter. In addition, the proposed

change adds Law Studies for 2014 high school graduates as an equivalent to the TOPS Core Curriculum social studies requirement. This proposed change could result in an increase in TOPS expenditures of less than $60,424 for 2014-2015 and beyond.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

The proposed rules will allow 13 students to become eligible for a TOPS award.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures.

George Badge Eldredge	Evan Brasseaux
General Counsel	Staff Director
1410#008	Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Qualtiy
Office of the Secretary
Legal Division

Significant Monitoring Concentration for $PM_{2.5}$ and Significant Impact Levels for PM_{10}, SO_2, NO_x and CO (LAC 33:III.509)(AQ349)

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.509 (AQ349).

This Rule will remove significant monitoring concentration (SMC) for $PM_{2.5}$ from LAC 33:509.I.5.a. Significant impact levels (SILs) for PM_{10}, SO_2, NO_X, and CO to Louisiana's Prevention of Significant Deterioration (PSD) program will be added to LAC 33:III.509.K.

On December 20, 2012, the department incorporated into the air regulations certain provisions of the Environmental Protection Agency's (EPA's) final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", which can be found at 75 FR 64864, October 20, 2010. At that time the department also added the SMC for $PM_{2.5}$, into the air regulations.

However, on January 22, 2013, the U.S. Court of Appeals for the D.C. Circuit found that EPA lacked the legal authority to adopt and use the $PM_{2.5}$ SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data (Sierra Club v. EPA, No. 10-1413). Consequently, the vacated SMC for $PM_{2.5}$ was removed from the federal PSD rules, 40 CFR 51.166 and 40 CFR 52.21, on December 9, 2013 (78 FR 73698). At the same time, EPA also instructed permitting authorities to revise the numerical value of the $PM_{2.5}$ SMC to 0 μg/m^3 (or make equivalent changes) as soon as feasible. This rulemaking will delete the $PM_{2.5}$ SMC from LDEQ's PSD program.

This rulemaking will also adopt the SILs for PM_{10}, SO_2, NO_X, and CO promulgated by EPA at 40 CFR 51.165(b)(2) and those for class I areas proposed by EPA at 61 FR 38250, 38331. Though states are not required to adopt SILs in their PSD programs (these values are not required by the Act as part of an approvable state implementation plan), it remains EPA's longstanding policy to allow the use of the SILs to determine: 1.) whether the air quality impacts attributed to a proposed new major stationary source or major modification warrant a comprehensive (cumulative) source impact analysis; 2.) the size of the impact area within which the air quality analysis is conducted, and 3.) whether air quality impacts are considered to cause or contribute to a violation of a NAAQS or PSD increment.

The basis and rationale for this rule are to delete the SMC for $PM_{2.5}$ from the air regulations and add SILs for PM_{10}, SO_2, NO_X, and CO to Louisiana's PSD program under LAC 33:III.509.

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 5. Permit Procedures
§509. Prevention of Significant Deterioration

A. - I.5.a. …

	* * *	
Particulate matter	10 μg/m^3 of PM_{10}	24-hour average
	* * *	

I.5.b. - J.4. …

K. Source Impact Analysis

1. …

a. any national ambient air quality standard (NAAQS) in any air quality control region; or

b. any applicable maximum allowable increase over the baseline concentration in any area (i.e., PSD increment).

2. Significant Impact Levels

a. The demonstration required in Paragraph K.1 of this Section is deemed to have been made if the emissions increase from the proposed source or modification alone would cause, in all areas, air quality impacts less than the following amounts.

Pollutant and Averaging Time	Micrograms per Cubic Meter
Class I	
Particulate matter:	
PM_{10}, Annual	0.2
PM_{10}, 24-hour	0.3
Sulfur dioxide:	
Annual	0.1
24-hour	0.2
3-hour	1.0
Nitrogen dioxide:	
Annual	0.1
Class II	
Particulate matter:	
PM_{10}, Annual	1.0
PM_{10}, 24-hour	5.0

Pollutant and Averaging Time	Micrograms per Cubic Meter
Sulfur dioxide:	
Annual	1.0
24-hour	5.0
3-hour	25.0
1-hour	7.8
Nitrogen dioxide:	
Annual	1.0
1-hour	7.5
Carbon monoxide:	
8-hour	500
1-hour	2000

b. Notwithstanding Subparagraph K.2.a of this Section, where the air quality impacts attributed to the proposed source or modification alone are less than the amounts listed above, the administrative authority may require the demonstration described in Paragraph K.1 of this Section if such impacts could result in violations of a NAAQS or PSD increment.

L. - AA.15.b. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended by the Office of the Secretary, Legal Division, LR 38:3163 (December 2012), LR 39:1280 (May 2013), LR 41:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ349. Such comments must be received no later than December 2, 2014, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. 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 AQ349. 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 November 25, 2014, 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.

These proposed regulations 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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Significant Monitoring Concentration for $PM_{2.5}$ and Significant Impact Levels for PM_{10}, SO_2, NO_x and CO

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.

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

There is no estimated 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)

Permit applicants proposing to construct a new major stationary source or major modification which will trigger Prevention of Significant Deterioration (PSD) review for particulate matter ($PM_{2.5}$) will be affected by deletion of the significant monitoring concentration, or SMC, for $PM_{2.5}$. The rule will require applicants to determine ambient concentrations of $PM_{2.5}$ prior to approval of the project, either by analyzing data collected from an LDEQ-operated monitor (if representative) or by installing a monitor at the project site. Applicants would choose to install a stand-alone monitor (at applicant's expense) if the applicant's research indicated that the LDEQ-operated monitor would record higher ambient concentrations of $PM_{2.5}$ than would be recorded by the closest LDEQ-operated monitor in current operation. Based on estimates from a vendor, a stand-alone $PM_{2.5}$ analyzer, including shelter and requisite communications equipment, would cost approximately $30,000. It is not possible to estimate costs associated with deletion of the $PM_{2.5}$ SMC because LDEQ has no knowledge of prospective projects that will trigger PSD review for $PM_{2.5}$. LDEQ would not know the location of such projects or know if monitors will have to be installed.

All permit applicants proposing to construct a new major stationary source or major modification which will trigger PSD review for PM_{10}, SO_2, NO_X, and/or CO will be impacted by the addition of significant impact levels (SILs). This aspect of the proposed action will have no effect on costs, including workload adjustments or additional paperwork.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson, CPM	Evan Brasseaux
Executive Counsel	Staff Director
1410#029	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Board of Pardons
Committee on Parole

Parole—Administration, Eligibility
and Types of Parole, Meetings and Hearings
(LAC 22:V.119 and 205 and XI.Chapters 1, 3, 5, and 8)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons/Committee on Parole hereby gives notice of its intent to enact and amend its rules of LAC 22:XI.102, 117, 307, 501, 504, 507, 511, 514, and Chapter 8. These proposed rule changes contain technical revisions and also incorporate acts of the 2014 Regular Legislative Session. Act 52 requires that the committee to notify the district attorney in the parish of conviction in advance of a scheduled parole hearing; Act 153 amends certain eligibility requirements for medical parole; Act 306 provides with respect to education, experience, and training requirements of committee members and provides with respect to majority vote in certain circumstances; Act 340 provides with respect to ameliorative penalty consideration. In addition, the Board of Pardons hereby gives notice of its intent to amend its rules of LAC 22:V.119 and 205. These proposed rule changes incorporates Act 6 of the 2014 Regular Legislative Session. Act 6 reduces the length of time before an individual serving a life sentence can re-apply for a clemency. In addition the board is proposing technical changes to training requirements, authorizing the training curriculum to be developed by the board chairman in collaboration with the Department of Public Safety and Corrections.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part V. Board of Pardons

Chapter 1. Administration

§119. Training

A. Within 90 days of being appointed to the board, each member shall complete a comprehensive training course developed by the board chairman in collaboration with the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15.572.4.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2253 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

Chapter 2. Clemency

§205. Application Filing Procedures

A. - C. ...

D. Reapplication upon Denial. Any applicant denied by the board shall be notified, in writing, of the reason(s) for the denial and thereafter may file a new application as indicated below.

1. Applicants Sentenced to Life Imprisonment. Any applicant with a life sentence may reapply five years after the initial denial; and every five years thereafter. Applicant must also meet the criteria stated in §203.C.2.a-d.

2. - 4. ...

5. Denial/No Action Taken by Governor after Favorable Recommendation. The board shall notify an applicant after its receipt of notification from the governor that the board's favorable recommendation was denied or no action was taken. The applicant may submit a new application within one year from the date on the board's notification to the applicant of governor's denial or no action.

E. Notice of Action Taken on Application. After review of application for clemency by the board, applicants shall be notified, in writing, of action taken by the board. Action can include granting a hearing before the board or denial of a hearing. If the applicant does not re-apply within the one year period, the application filing procedures in A-D.3. of this Section, shall apply

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2255 (August 2013), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

Part XI. Committee on Parole

Chapter 1. Administration

§102. Powers and Duties of the Committee

A. The Louisiana Committee on Parole shall:

1. make parole release and revocation decisions under R.S. 15:574.2;

2. evaluate any application filed pursuant to R.S. 15:308 and taking into consideration the risk of danger the applicant would pose to society if released from confinement, shall make recommendations to the Board of Pardons as to whether the applicant is eligible for a reduction in sentence pursuant to R.S. 15:308;

3. adopt rules not inconsistent with law as the committee deems necessary and proper with respect to the eligibility of offenders for parole and the conditions imposed upon offenders who are released on parole;

4. keep records of its official actions and make them accessible according to law;

5. collect, develop, and maintain statistical information concerning its services and decisions;

a. notify the district attorney of the parish where the conviction occurred; the notification shall be in writing and shall be issued at least 30 days prior to the hearing date. The district attorney of the parish where the conviction occurred shall be allowed to review the record of the offender since incarceration, including but not limited to any educational or vocational training, rehabilitative program participation, disciplinary conduct and risk assessment score. The district

attorney shall be allowed to present testimony to the committee and submit information relevant to the proceedings;

6. when requested to do so, submit written notification of the offender's pending release, at least seven days prior to the offender's date of release, to the chief of police, sheriff, or district attorney of the parish where the offender will reside and where the conviction(s) occurred;

7. submit an annual report on the committee's performance to the Secretary of the Department of Public Safety and Corrections on or before February 1 each year for the previous calendar year, to include statistical and other data with respect to the determination and work of the committee, relevant data of committee decisions, a summary of past practices and outcomes, plans for the upcoming year, research studies which the committee may make of sentencing, parole, or related functions, and may include recommendations for changes considered necessary to improve its effectiveness.

B. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2258 (August 2013), amended LR 41:

§103. Composition of the Committee

A.1. - C. ...

D. All members, except the ex-officio member, appointed after August 1, 2014 shall possess not less than a bachelor's degree from an accredited college or university, and shall possess not less than five years actual experience in the field of corrections, law enforcement, sociology, law, education, social work, medicine, psychology, psychiatry, or a combination thereof. If a member does not have a bachelor's degree from an accredited college or university, he shall have no less than seven years experience in a field listed in this Subparagraph. The provisions of this Subparagraph shall not apply to any person serving as a member of the board on August 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2292 (December 1998), amended by Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2259 (August 2013), LR 41:

§117. Training

A. Within 90 days of being appointed to the committee, each member shall complete a comprehensive training course developed by the board chairman in collaboration with the Department of Public Safety and Corrections. Each member shall complete a minimum of eight hours of training annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:2294 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2261 (August 2013), LR 41:

Chapter 3. Parole—Eligibility and Types

§307. Medical Parole

A. An offender determined by the secretary of the Department of Public Safety and Corrections to be permanently disabled or terminally ill may be eligible for parole release consideration.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical parole consideration.

2. Offenders who are serving a sentence for first degree murder, second degree murder, or who are awaiting execution are not eligible for medical parole consideration.

B. *Permanently Disabled Offender*—any offender who is unable to engage in any substantial gainful activity by reason of any medically determinable physical impairment which can be expected to result in death or which is or can be expected to be permanently irreversible.

C. *Terminally Ill Offender*—any offender who, because of an existing medical condition, is irreversibly terminally ill. For the purposes of this section, "terminally ill" is defined as having a life expectancy of less than one year due to an underlying medical condition.

D. Public hearings for medical parole consideration will be held at a location convenient to the committee and the offender. The committee may request that additional medical information be provided or that further medical examinations be conducted. The committee shall determine the risk to public safety and shall grant parole only after determining that the offender does not pose a threat to public safety. In the assessment of risk, emphasis shall be given to the offender's medical condition and how this relates to his overall risk to society.

E. The authority to grant medical parole shall rest solely with the committee.

1. The committee shall not grant medical parole unless advised by the secretary of the Department of Public Safety and Corrections or the secretary's designated healthcare authority that the offender is permanently disabled or terminally ill.

2. The committee, if it grants medical parole, may establish any additional conditions of medical parole as it may deem necessary to monitor the offender's physical condition and to assure that the offender is not a danger to himself and society.

F. Supervision of an offender released on medical parole shall consist of periodic medical evaluations at intervals to be determined by the committee at the time of release.

1. An offender released on medical parole may have his parole revoked if his medical condition improves to such a degree that he is no longer eligible for medical parole.

2. Medical parole may also be revoked for violation of any condition of parole as established by the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013), LR 41:

Chapter 5. Meetings and Hearings of the Committee on Parole

§501. Types of Meetings

A. All meetings and hearings of the committee shall be open to the public, in accordance with the provisions of R.S. 42:1 et seq., (public policy for open meetings) and *Robert's Rules of Order*. For the purpose of convenience and in order to differentiate between the different types of forums for conducting business, the following designation or title has been given, depending upon the nature of the matters or actions to be considered.

1. A *business meeting* is a meeting of the full committee to discuss all general business matters as set forth in §507.

2. A *public hearing* is a meeting of randomly selected, three-member panels, as set forth in §511.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2262 (August 2013), LR 41:

§503. Parole Panels

A - C. ...

D. A member may request a change in the composition of a panel to which that member has been assigned. However, such requests shall be carefully considered and shall generally only be made in the case of illness or emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2298 (December 1998), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2262 (August 2013), LR 41:

§504. General Procedures

A. Minutes. The committee's minutes of public hearings shall include the following information as applicable:

1. name and Department of Corrections (DOC) number of the offender;

2. name of counsel representing the offender (an offender docketed for a public hearing may be represented by counsel);

3. the vote of each member; and

4. the decision of the committee.

B. Votes

1. The vote of each panel member shall be recorded by name and date on the vote sheet.

2. Only those members present shall vote; voting by proxy is prohibited.

3. No vote shall be taken while the panel is in executive session.

4. The panel shall not rescind the original vote without conducting a new hearing, except as provided in §505.L, §513.A.1-3, and §711.

5. The original vote sheet shall remain in the inmate's DOC file and a copy shall be attached to the minutes and maintained in a separate locked file in the committee office.

C. Accuracy of Vote. The chairperson of the panel shall ensure that support staff reviews case records subsequent to voting to assure the accuracy of all documents.

D. Continuance/Recess. A majority vote is required to continue or recess a meeting or hearing. Generally, the matter will be rescheduled for the next month, but may be rescheduled for an earlier date if deemed appropriate by the panel (see §514, Voting/Votes Required).

E. Executive Session. A panel may go into executive session to discuss each offender's case prior to a decision pursuant to the provisions of R.S. 42:6, 42:6.1 and 15:574.12. No vote shall be taken while the panel is in executive session.

F. Observance of Proceedings. The committee may extend invitations to individuals to observe committee proceedings.

G. Testimony. The committee may direct questions to and/or request statements from anyone appearing before the committee.

H. Children Under 12. It is generally inappropriate for children under the age of 12 years, except when the child is a victim and chooses to appear, to be present during any public meeting or hearing of the committee.

I. Space and Security. The number of people supporting or opposing the granting of parole, including victims and/or family members of victims will be limited only by space and security considerations.

J. Meeting/Hearing Schedule. The chairman shall be responsible for schedules of business meetings and public hearings.

1. Such schedules may be changed, only upon prior notice, provided that such changes are made in a timely manner in order to notify all concerned.

2. Such meetings may be rescheduled without notice due to inclement weather, or any other emergency or unforeseen situation.

K. Upon notification by the secretary of the Department of Public Safety and Corrections that an offender has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the committee may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

§505. Duty Officer

A. The chairman of the committee or his or her designee shall develop a duty calendar and shall designate one committee member as the daily duty officer.

1. The duty officer shall be available and present to act on behalf of the committee concerning both routine office and administrative matters as authorized by these rules.

2. If the duty officer must substitute for another member at a hearing or is absent for any other reason, he or she need not be replaced by another duty officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

§507. Business Meetings

A. - B.4. ...

C. Business meetings should be audio recorded and copies of the audio recording and/or written minutes shall be available upon request.

D. At business meetings, detailed minutes indicating time of commencement, persons present (including visitors and witnesses), adoption of previous minutes, motions and seconds, and time of adjournment shall be recorded and maintained by the committee staff member so designated by the chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013) amended LR 41:

§511. Panel Action

A. The chairman shall schedule public hearings. A copy of the schedule shall be available for public inspection at the committee office.

B.1. - B.2.c. ...

d. to evaluate and consider any application filed pursuant to R.S. 15:308 in accordance with rules promulgated by the Department of Public Safety and Corrections and Chapter 8, "Ameliorative Penalty Consideration."

C. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and RS. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2299 (December 1998), amended LR 28:1597 (July 2002), amended by the Department of Public Safety and Corrections, Corrections Services, LR 36:2872 (December 2010), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons, LR 40:57 (January 2014), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

§514. Voting/Votes Required

A. - A.4. ...

B. Majority Vote

1. The committee may grant parole with two votes of a three-member panel, or, if the number exceeds a three-member panel, a majority vote of those present if all of the following conditions are met.

a. The offender has not been convicted of a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, or convicted of an offense which would constitute a crime of violence as defined in R.S. 14:2(B) or a sex offense as defined in R.S. 15:541, regardless of the date of conviction.

b. The offender has not committed any major disciplinary (schedule B) offenses in the 12 consecutive months prior to the parole hearing date. If the offender's period of incarceration is less than 12 months, the offender must not have committed any disciplinary offenses during his/her entire period of incarceration.

c. The offender has completed the mandatory minimum of 100 hours of pre-release programming in accordance with R.S. 15:827.1, if such programming is available at the facility where the offender is incarcerated.

d. The offender has completed substance abuse treatment as applicable, if such programming is available at the facility where the offender is incarcerated.

e. The offender has obtained a HSE credential, unless the offender has previously obtained a high school diploma or is deemed by a certified educator as being incapable of obtaining a HSE credential due to a learning disability. If the offender is deemed incapable of obtaining a HSE credential, the offender must complete at least one of the following:

i. a literacy program;

ii. an adult basic education program; or

iii. a job skills training program.

f. The offender has obtained a low-risk level designation determined by a validated risk assessment instrument approved by the secretary of the Department of Public Safety and Corrections.

2. A majority vote is required to revoke parole.

3. A majority vote is required to continue or recess a meeting or hearing.

4. A majority vote is required to grant an offender's request for a rehearing.

5. A majority vote is required for executive session.

6. A majority vote is required to recommend to the Board of Pardons as to whether an applicant is eligible for a reduction in sentence pursuant to R.S. 15:308 and Chapter 8, "Ameliorative Penalty Consideration."

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2264 (August 2013), amended LR 41:

Chapter 8. Ameliorative Penalty Consideration

§801. Application

A. An offender may apply for ameliorative penalty consideration in as provided by R.S.15:308(C) relative to ameliorative penalty provisions, in accordance with rules promulgated by the Department of Public Safety and Corrections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

§803. Committee Evaluation

A. After a determination that an offender qualifies for consideration under R.S. 15:308(C) and rules set by the department, the Department of Public Safety and Corrections shall forward all such applications to the Committee on Parole. The case shall be set for administrative review by a parole panel.

B. The panel shall evaluate the record of any offender whose application is submitted by the department, taking into consideration the risk of danger the applicant would pose to society if released from confinement. Such evaluation may be conducted by record review, telephone or video conference, or other meeting technology at the discretion of the panel.

C. The criteria for such evaluation includes, but is not limited to the guidelines listed in Chapter 7, §701.C.1, 2, 4,

and D.8. In addition, an offender shall be considered inappropriate for recommendation to the Board of Pardons for ameliorative penalty consideration for one or any combination of the following:

1. poor conduct and/or disciplinary record, including habitual and compulsive violent behavior, consistent signs of bad work habits, lack of cooperation or good faith effort and/or other undesirable behavior;

2. maximum custody status, except those offenders assigned to maximum custody based solely upon classification criteria other than disciplinary reasons;

3. low level of program activity and/or completion when compared to program opportunity and availability;

4. extensive habitual and or violent criminal history;

5. extensive supervision revocation history.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

§805. Parole Panel Decision/Recommendation

A. All members of the panel will vote individually to grant or deny (with or without instructions) the offender's application. Any recommendation of the panel shall not be binding on the board.

1. If the offender's application is granted, the application and packet shall be forwarded to the Board of Pardons with a recommendation for reduction in sentence pursuant to R.S. 15:308.

B. The panel may also recommend new, additional, and/or require completion of programming, within the Department, such as substance abuse treatment, educational or vocational training, etc.

C. The committee shall notify each offender in writing of the panel's decision in his/her case with instructions, if applicable. A copy of all decisions shall be disseminated to the warden of the facility where the offender is housed, the offender's master prison record, and the offender's case record.

D. In the event the offender is instructed to re-apply to the Committee on Parole, re-application frequency shall be a minimum of 12 months.

E. The decision of the parole panel is final and shall not be appealed through the administrative remedy procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

§807. Victim Notification

The committee shall ensure victims registered with the Crime Victims Services Bureau of the department receive written notification of the date and time an offender is docketed for review by a parole panel. Such notice shall be made no less than 30 days prior to the scheduled docket date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 41:

Family Impact Statement

Amendment to the rules has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relations to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Written comments may be addressed to Linda Landry, Principal Assistant, Board of Pardons and Parole, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on November 9, 2014.

Sheryl M. Ranatza
Board Chair

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Parole—Administration, Eligibility and Types of Parole, Meetings and Hearings

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

The proposed rule change may result in an indeterminable decrease in expenditures to the Department of Corrections for each offender being released from custody earlier due to good time. The proposed rule change incorporates several Acts of the 2014 Regular Legislative Session. For those offenders affected by the proposed rule changes, the state would realize a total cost savings of $7,975 per offender annually ($24.39 per day less $2.54 per day, per offender x 365 days). The $2.54 offset is the projected cost per offender per day for parole supervision. Savings are more likely to be incurred for offenders housed at the local level due to state facilities backfilling beds in a more timely manner.

Act 6 reduces the length of time before an individual serving a Life sentence can re-apply for a clemency after a prior application has been denied from seven years to five years.

Act 52 requires the committee to notify the district attorney in the parish of conviction at least 30 days in advance of a scheduled parole hearing.

Act 153 amends certain eligibility requirements for medical parole. The act removes the disqualification of having a contagious disease from eligibility for consideration of medical parole. The act also removes the “danger to himself or others” element from the definition of permanently disabled offender and “terminally ill offender” and adds to the definition of “terminally ill” to mean a life expectancy of less than one year due to an underlying medical condition.

Act 306 provides with respect to education, experience, and training requirements of committee members and provides with respect to majority vote in certain circumstances.

Act 340 provides with respect to ameliorative penalty consideration and provides relative to the procedure by which an authorized reduction in sentence may be granted to offenders by the Department of Public Safety and Corrections.

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

The proposed rule change may result in an indeterminable increase in self-generated revenue as a result of offenders being

released into parole supervision. For each offender that is released to parole at an earlier date, the Department of Corrections could collect up to $63 per month from each offender under parole supervision. The Board of Parole determines the amount paid by the offender based on the offender's ability to pay.

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

For every offender released, there would be costs to affected person for parole fees. However, there would be economic benefits to the affected person provided he is employed upon release.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have a positive inpact on employment when affected persons are employed upon release.

Thomas C. Bickham, III
Undersecretary
1410#089

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Office of Group Benefits

Employee Benefits
(LAC 32:I.Chapters 1-13, III.Chapters 1-7, V.Chapters 1-7, IX.Chapters 1-7)

In accordance with the applicable provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:801(C) and 802(B)(1), vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend several provisions of Title 32 in the Louisiana Administrative Code. This action will enhance member clarification and provide for the administration, operation, and management of health care benefits effectively for the program and member. Accordingly, OGB hereby gives Notice of Intent to adopt the following Rules to become effective upon promulgation.

Title 32
EMPLOYEE BENEFITS
Part I. General Provisions

Chapter 1. General Information

§101. Organizational Description

A. The Office of Group Benefits operates pursuant to La. R.S. 42:801 et seq. OGB is responsible for the general administration and management of all aspects of programs of benefits as authorized or provided for under the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:199 (May 1980), amended LR 40:

§103. OGB Plan and Other Authorized Plans

A. OGB Plan and Plan Administrator. The OGB Plan is the program of benefits offered by or through OGB. OGB may offer a variety of self-funded or insured plans of benefits.

B. Other Plans. Plan Insurer and Plan Administrator. To the extent any governmental and administrative subdivisions, departments, or agencies of the executive, legislative, or judicial branches, or the governing boards and authorities of each state university, college, or public elementary and secondary school system in the state are authorized to procure private contracts of health insurance and/or operate or contract for all or a portion of the administration of a self-funded plan, such plans not directly operated or offered by OGB shall be governed by the terms and conditions of the applicable plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 40:

Chapter 3. Uniform Provisions—Participation in the Office of Group Benefits

§301. Eligibility for Participation in OGB Health Coverage and Life Insurance [Formerly §303]

A. Employees of a public entity who participate in the Louisiana State Employees Retirement System, Louisiana Teacher's Retirement System, State Police Pension and Retirement System, or the Louisiana School Employees Retirement System due to their status as an employee of such public entity are eligible to participate in OGB group benefit programs pursuant to R.S. 42:808. No individual may participate in a program sponsored by OGB unless the school board, state agency or political subdivision through which the individual is actively employed or retired participates in OGB as a group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:199 (May 1980), amended LR 8:486 (September 1982), LR 17:891 (September 1991), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§303. Enrollment Procedures for Participation in OGB Health Coverage and Life Insurance

A. Any state agency, school board, political subdivision, or other entity that seeks to participate in programs offered through OGB shall comply with the following.

1. The head of the agency shall submit a written request to OGB to commence participation in its programs, together with a resolution of authorization from the board, commission, or other governing authority, if applicable.

2. The request for participation shall be reviewed to verify the eligibility of the requesting agency.

3. The requesting agency shall obtain an experience rating from OGB.

a. The requesting agency shall submit claims experience under its prior plan for the 36 month period immediately prior to its application together with the required advance payment to cover the cost of the experience rating.

b. The actuarial consultant serving OGB shall conduct the experience rating and determine the premiums due.

c. For any state agency, school board, political subdivision, or other eligible entity that elects to participate in the OGB health and accident programs after participation in another group health and accident insurance program, the premium rate applicable to the employees and former employees of such group shall be the greater of the premium rate based on the loss experience of the group under the prior plan or the premium rate based on the loss experience of the classification into which the group is entering.

d. In the event that the initial premium is based on the loss experience of the group under the prior plan, such premium shall remain in effect for three years and then convert to the published rate for all other OGB enrollees.

B. Open enrollment is a period of time, designated by OGB, during which an eligible employee or retiree may enroll for benefits under an OGB plan. OGB will hold open enrollment for a coverage effective date of January 1 or such other date as may be determined by OGB. Transfer of coverage will only be allowed during open enrollment, unless otherwise allowed or required by OGB or state or federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§305. Retiree Eligibility

A. For the purpose of determining eligibility to participate in OGB health coverage and life insurance, the term *retiree* shall refer only to an individual who was an enrollee immediately prior to the date of retirement and who, upon retirement, satisfied one of the following categories:

1. immediately received retirement benefits from an approved state or governmental agency defined benefit plan;

2. was not eligible for participation in such plan or legally opted not to participate in such plan, and either:

a. began employment prior to September 15, 1979, has 10 years of continuous state service, and has reached the age of 65;

b. began employment after September 15, 1979, has 10 years of continuous state service, and has reached the age of 70;

c. began employment after July 8, 1992, has 10 years of continuous state service, has a credit for a minimum of 40 quarters in the Social Security system at the time of employment, and has reached the age of 65; or

d. maintained continuous coverage with an OGB plan of benefits as an eligible dependent until he/she became eligible to receive a retirement benefit from an approved state governmental agency defined benefit plan as a former state employee; or

3. Immediately received retirement benefits from a state-approved or state governmental agency approved defined contribution plan and has accumulated the total number of years of creditable service which would have entitled him/her to receive a retirement allowance from the defined benefit plan of the retirement system for which the employee would have otherwise been eligible. The appropriate state governmental agency or retirement system responsible for administration of the defined contribution plan is responsible for certification of eligibility to OGB.

B. Retiree also means an individual who was a covered employee and continued the coverage through the provisions of COBRA immediately prior to the date of retirement and who, upon retirement, qualified for any of Paragraphs 1, 2, or 3 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§307. Persons to be Covered

A. Employee Coverage

1. For the purpose of determining eligibility to participate in OGB health coverage and life insurance, the term *employee* shall refer to a full-time employee as defined by a participating employer and in accordance with federal and state law.

2. Husband and Wife, Both Employees. No one may be enrolled simultaneously as an employee and as a dependent under an OGB plan, nor may a dependent be covered as a dependent of more than one employee. If a covered spouse is eligible for coverage as an employee and chooses to be covered separately at a later date, that person will be an enrollee effective the first day of the month after the election of separate coverage. The change in coverage will not increase the benefits.

3. Effective Dates of Coverage, New Employee, Transferring Employee. Coverage for each employee who follows the OGB procedures for enrollment and agrees to make the required payroll contributions to his/her participating employer is effective as follows:

a. if employment begins on the first day of the month, coverage is effective on the first day of the following month (for example, if employment begins on July 1, coverage will begin on August 1);

b. if employment begins on or after the second day of the month, coverage is effective on the first day of the second month following employment (for example, if employment begins on July 15, coverage will begin on September 1);

c. employee coverage will not become effective unless the employee completes an enrollment form within 30 days following the date employment begins.

d. an employee who transfers employment to another participating employer shall complete a transfer form within 30 days following the date of transfer to maintain coverage without interruption.

4. Re-Enrollment Previous Employment for Health Benefits and Life Insurance

a. An employee whose employment terminated while covered who is re-employed within 12 months of the date of termination will be considered a re-enrollment previous employment applicant. A re-enrollment previous employment applicant will be eligible for only that classification of coverage (employee, employee and one dependent, employee and children, family) in force on the date of termination.

b. If an employee acquires an additional dependent during the period of termination, that dependent may be covered if added within 30 days of re-employment.

5. Members of Boards and Commissions. Except as otherwise provided by law, members of boards or commissions are not eligible for participation in an OGB plan of benefits. This section does not apply to members of school boards or members of state boards or commissions who are determined by the participating employer and in

accordance with federal and state law to be full-time employees.

6. Legislative Assistants. Legislative assistants are eligible to participate in an OGB plan if they are determined to be full-time employees by the participating employer under applicable federal and state law or pursuant to R.S. 24:31.5(C), either:

1. receive at least 60 percent of the total compensation available to employ the legislative assistant if a legislator employs only one legislative assistant; or

2. is the *primary legislative assistant* as defined in R.S. 24:31.5(C) when a legislator employs more than one legislative assistant.

B. Retiree Coverage

1. Eligibility

a. Retirees of participating employers are eligible for retiree coverage under an OGB plan.

b. An employee retired from a participating employer may not be covered as an active employee.

2. Effective Date of Coverage

a. Retiree coverage will be effective on the first day of the month following the date of retirement if the retiree and participating employer have agreed to make and are making the required contributions (for example, if retired July 15, coverage will begin August 1).

C. Documented Dependent Coverage

1. Eligibility. A documented dependent of an eligible employee or retiree will be eligible for dependent coverage on the later of the following dates:

a. date the employee becomes eligible;

b. date the retiree becomes eligible; or

c. date the covered employee or covered retiree acquires a dependent.

2. Effective Dates of Coverage—application for coverage is required to be made within 30 days of eligibility for coverage.

a. Documented Dependents of Employees. Coverage will be effective on the date of marriage for new spouses, the date of birth for newborn children, or the date acquired for other classifications of dependents, if application is made within 30 days of the date of eligibility.

b. Documented Dependents of Retirees. Coverage for dependents of retirees who were covered immediately prior to retirement will be effective on the first day of the month following the date of retirement. Coverage for dependents of retirees first becoming eligible for dependent coverage following the date of retirement will be effective on the date of marriage for new spouses, the date of birth for newborn children, or the date acquired for other classifications of dependents, if application is made within 30 days of the date of eligibility.

D. Special Enrollments—HIPAA. Certain eligible persons for whom the option to enroll for coverage was previously declined and who would be considered overdue applicants may enroll as provided for by HIPAA under circumstances, terms, and conditions for special enrollments.

E. Health Maintenance Organization (HMO) Option. In lieu of participating in an OGB self-funded health plan, enrollees may elect coverage under an OGB offered fully insured HMO.

F. Medicare Advantage Option for Retirees (effective July 1, 1999). Retirees who are eligible to participate in an OGB sponsored Medicare Advantage plan who cancel participation in an OGB plan of benefits upon enrollment in an OGB sponsored Medicare Advantage plan may re-enroll in an OGB offered plan of benefits upon withdrawal from or termination of coverage in the Medicare Advantage plan at Medicare's open enrollment or OGB's open enrollment period.

G. Tricare for Life Option for Military Retirees. Retirees eligible to participate in the Tricare for Life (TFL) option on and after October 1, 2001 who cancel participation in an OGB plan of benefits upon enrollment in TFL may re-enroll in an OGB offered plan of benefits in the event that the TFL option is discontinued or its benefits are significantly reduced.

H. Eligibility requirements apply to all participants in OGB health coverage and life insurance programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§309. Medicare and OGB

A. When an individual is covered by an OGB plan of benefits and by Medicare, Medicare laws and regulations govern the order of benefit determination, that is, whether Medicare is the primary or secondary payer.

B. Except as provided in Subsection C (below), when an individual is covered by an OGB plan of benefits and by Medicare, and:

1. an OGB plan of benefits is the primary payer, benefits will be paid without regard to Medicare coverage;

2. Medicare is the primary payer, eligible expenses under an OGB plan of benefits will be limited to the amount allowed by Medicare, less the amount paid or payable by Medicare. All provisions of an OGB plan of benefits, including all provisions related to deductibles, co-insurance, limitations, exceptions, and exclusions will be applied.

C. The following applies to retirees and their covered spouses who attain or have attained the age of 65 on or after July 1, 2005, and who have no other group health coverage through present (active) employment:

1. A retiree or spouse of a retiree who attains or has attained age 65 when either has sufficient earnings credits to be eligible for Medicare, shall enroll in Medicare Part A and Medicare Part B in order to receive benefits under an OGB plan except as specifically provided in Paragraph 2, below.

2. If such retiree or spouse of a retiree is not enrolled in Medicare Part A and Medicare Part B, no benefits will be paid or payable under an OGB plan of benefits except benefits payable as secondary to the part of Medicare in which the individual is enrolled.

D. A retiree and spouse of a retiree who do not have sufficient earnings credits to be eligible for Medicare shall provide written verification from the Social Security Administration or its successor.

E. Medicare Coordination of Benefits (Retiree 100). Upon enrollment and payment of the additional monthly premium, an enrollee and dependents who are covered under Medicare Parts A and B (both) may choose to have full coordination of benefits with Medicare. Enrollment shall be made within 30 days of eligibility for Medicare, within 30 days of retirement if already eligible for Medicare, or at open enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§311. Reinstatement to Position Following Civil Service Appeal

A. Self-Funded Plan Participants. When coverage of a terminated employee who was enrolled in an OGB self-funded plan is reinstated by reason of a civil service appeal, coverage will be reinstated to the same level in the OGB plan of benefits retroactive to the date coverage terminated. The employee and participating employer are responsible for the payment of all premiums for the period of time from the date of termination to the date of the final order reinstating the employee to his/her position. The OGB plan is responsible for the payment of all eligible benefits for charges incurred during this period. All claims for expenses incurred during this period shall be filed with the OGB plan within 60 days following the date of the final order of reinstatement.

B. Fully Insured HMO Participants. When coverage of a terminated employee who was enrolled in a fully insured HMO is reinstated by reason of a civil service appeal, coverage will be reinstated in the fully insured HMO in which the employee was participating effective on the date of the final order of reinstatement. There will be no retroactive reinstatement of coverage and no premiums will be owed for the period during which coverage with the fully insured HMO was not effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§313. Enrollee Coverage Termination

A. Subject to continuation of coverage and COBRA rules, all benefits of an enrollee will terminate under plans offered by OGB on the earliest of the following dates:

1. date OGB terminates;
2. date the group or agency employing the enrollee terminates or withdraws from OGB;
3. date contribution is due if the group or agency fails to pay the required contribution for the enrollee;
4. date contribution is due if the enrollee fails to make any contribution which is required for the continuation of coverage;
5. last day of the month of the enrollee's death; or
6. last day of the month in which the enrollee is eligible for OGB plan coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§315. Dependent Coverage Termination

A. Subject to continuation of coverage and COBRA rules, dependent coverage will terminate under any OGB plan of benefits on the earliest of the following dates:

1. last day of the month the enrollee is covered;
2. last day of the month in which the dependent, as defined by OGB, is an eligible dependent of the enrollee;
3. for grandchildren for whom the enrollee does not have legal custody or has not adopted, on the date the child's parent loses eligibility under any OGB plan or the grandchild no longer meets the definition of a child; or
4. upon discontinuance of all dependent coverage under OGB plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§317. Change of Classification

A. Adding or Deleting Dependents. When a dependent is added to or deleted from the enrollee's coverage due to a qualifying event, under applicable state or federal law, active enrollees shall notify their HR liaison and retired enrollees shall notify OGB. Notice shall be provided within 30 days of the addition or deletion.

B. Change in Coverage

1. When there is a change in family status (e.g., marriage, birth of child) the change in classification will be effective on the date of the event. Application for the change shall be made within 30 days of the date of the event.
2. When the addition of a dependent changes the class of coverage, the additional premium will be charged for the entire month if the date of change occurs before the fifteenth day of the month. If the date of change occurs on or after the fifteenth day of the month, an additional premium will not be charged until the first day of the following month.

C. Notification of Change. It is the enrollee's responsibility to provide notice of any change in classification of coverage that affects the enrollee's contribution amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§319. Continued Coverage

A. Leave of Absence. If an enrollee is allowed an approved leave of absence by his/her participating employer, the enrollee may retain the coverage for up to one year if the premium is paid. Failure to pay the premium will result in cancellation of coverage. The enrollee and/or the participating employer shall notify OGB within 30 days of the effective date of the leave of absence.

1. Leave of Absence without Pay, Employer Contributions to Premiums

a. An enrollee who is granted leave of absence without pay due to a service related injury may continue coverage and the participating employer shall continue to pay its portion of health plan premiums for up to 12 months.

b. An enrollee who suffers a service related injury that meets the definition of a total and permanent disability under the workers' compensation laws of Louisiana may continue coverage and the participating employer shall continue to pay its portion of the premiums until the enrollee becomes gainfully employed or is placed on state disability retirement.

c. An enrollee who is granted leave of absence without pay in accordance with the federal Family and Medical Leave Act (F.M.L.A.) may continue coverage during the time of such leave and the participating employer shall continue to pay its portion of premiums if the enrollee continues his/her coverage.

2. Leave of Absence without Pay; No Employer Contributions to Premiums. An enrollee granted leave of absence without pay for reasons other than those stated in Paragraph A(1), may continue to participate in an OGB plan

for a period up to 12 months upon the enrollee's payment of the full premiums due.

B. Disability. Enrollees who have been granted a waiver of premium for basic or supplemental life insurance prior to July 1, 1984, may continue OGB plan coverage for the duration of the waiver if the enrollee pays the total contribution to the participating employer. Disability waivers were discontinued effective July 1, 1984.

C. Surviving Dependents/Spouse

1. Benefits under an OGB plan of benefits for covered dependents of a deceased enrollee will terminate on the last day of the month in which the enrollee's death occurred unless the surviving covered dependents elect to continue coverage.

a. The surviving legal spouse of an enrollee may continue coverage unless or until the surviving spouse is or becomes eligible for coverage in a group health plan other than Medicare.

b. The surviving dependent child of an enrollee may continue coverage unless or until such dependent child is or becomes eligible for coverage under a group health plan other than Medicare or until attainment of the termination age for children, whichever occurs first.

c. Surviving dependents will be entitled to receive the same participating employer premium contributions as enrollees, subject to the provisions of Louisiana Revised Statutes, Title 42, Section 851 and rules promulgated pursuant thereto by OGB.

d. Coverage provided by the Civilian Health and Medical Program for the Uniformed Service (CHAMPUS/TRICARE) or successor program will not be sufficient to terminate the coverage of an otherwise eligible surviving legal spouse or dependent child.

2. A surviving spouse or dependent child cannot add new dependents to continued coverage other than a child of the deceased enrollee born after the enrollee's death.

3. Participating Employer/Dependent Responsibilities

a. To continue coverage, it is the responsibility of the participating employer and surviving covered dependent to notify OGB within 60 days of the death of the enrollee.

b. OGB will notify the surviving dependents of their right to continue coverage.

c. Application for continued coverage shall be made in writing to OGB within 60 days of receipt of notification. Premiums for continued coverage shall be paid within 45 days of the coverage application date for the coverage to be effective on the date coverage would have otherwise terminated.

d. Coverage for the surviving spouse under this section will continue until the earliest of the following:

i. failure to pay the applicable premium timely; or

ii. eligibility of the surviving spouse for coverage under a group health plan other than Medicare.

e. Coverage for a surviving dependent child under this section will continue until the earliest of the following events:

i. failure to pay the applicable premium timely;

ii. eligibility of the surviving dependent child for coverage under any group health plan other than Medicare; or

iii. the attainment of the termination age for children.

4. The provisions of Paragraphs 1 through 3 of this Subsection are applicable to surviving dependents who, on or after July 1, 1999, elect to continue coverage following the death of an enrollee. Continued coverage for surviving dependents who made such election before July 1, 1999, shall be governed by the rules in effect at the time.

D. Over-Age Dependents. If a dependent child is incapable of self-sustaining employment by reason of mental or physical incapacity and became incapable prior to attainment of age 26, the coverage for the dependent child may be continued for the duration of incapacity.

1. Prior to such dependent child's attainment of age 26, an application for continued coverage is required to be submitted to OGB together with current medical information from the dependent child's attending physician to establish eligibility for continued coverage.

2. OGB may require additional medical documentation regarding the dependent child's incapacity upon receipt of the application for continued coverage and as often as it may deem necessary thereafter.

3. The incapacity determination shall be a medical determination subject to the appeal procedures of the enrollee’s plan of benefits.

E. Military Service. Members of the National Guard or of the United States military reserves who are called to active military duty and who are OGB enrollees or covered dependents will have access to continued coverage under OGB's health and life plans of benefits.

1. Health Plan Participation. When called to active military duty, enrollees and covered dependents may:

a. continue participation in any OGB self-funded plan during the period of active military service and the participating employer may continue to pay its portion of premiums; or

b. cancel participation in any OGB self-funded plan during the period of active military service and apply for reinstatement of OGB coverage within 30 days of:

i. the date of the enrollee's reemployment with a participating employer;

ii. the dependent's date of discharge from active military duty; or

iii. the date of termination of extended health coverage provided as a benefit of active military duty, such as TRICARE Reserve Select.

2. Plan participants who elect this option and timely apply for reinstatement of OGB coverage will not experience any adverse consequences with respect to the participation schedule set forth in R.S. 42:851E and the corresponding Rules promulgated by OGB.

3. Life Insurance. When called to active military duty, enrollees with OGB life insurance coverage may:

a. continue participation in OGB life insurance during the period of active military service, but the accidental death and dismemberment coverage will not be in effect during the period of active military duty; or

b. cancel participation in OGB life insurance during the period of active military service and the enrollee may apply for reinstatement of OGB life insurance within 30

days of the date of the enrollee's reemployment with a participating employer; enrollees who elect this option and timely apply for reinstatement of OGB life insurance will not be required to provide evidence of insurability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§321. COBRA

A. Employees

1. Coverage under OGB for an enrollee will terminate on the last day of the calendar month during which employment is terminated (voluntarily or involuntarily) or significantly reduced, the enrollee no longer meets the definition of an employee, or coverage under a leave of absence has expired, unless the enrollee elects to continue coverage at the enrollee's own expense. Employees terminated for gross misconduct are not eligible for COBRA coverage.

2. It is the responsibility of the participating employer to notify OGB within 30 days of the date coverage would have terminated because of any of the foregoing events, and OGB will notify the enrollee within 14 days of his/her right to continue coverage.

3. Application for continued coverage shall be made in writing to OGB within 60 days of the date of the election notification and premium payment shall be made within 45 days of the date the employee elects continued coverage, for coverage retroactive to the date coverage would have otherwise terminated. After the first payment, monthly payments for COBRA coverage are due on the first day of the month for that month's coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

4. Coverage under this section will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 18 months from the date coverage would have otherwise terminated;

c. entitlement to Medicare;

d. date coverage begins under a group health plan; or

e. the employer ceases to provide any group health plan coverage for its employees.

5. If employment for a covered employee is terminated (voluntarily or involuntarily) or significantly reduced, the enrollee no longer meets the definition of an employee, or a leave of absence has expired, and the employee has not elected to continue coverage, the covered dependents may elect to continue coverage at his/her/their own expense. The elected coverage will be subject to the above-stated notification and termination provisions.

B. Surviving Dependents

1. Coverage under an OGB plan for covered surviving dependents will terminate on the last day of the month in which the enrollee’s death occurs, unless the surviving covered dependents elect to continue coverage at their own expense.

2. It is the responsibility of the participating employer or surviving covered dependents to notify OGB within 30 days of the death of the enrollee. OGB will notify the surviving dependents of their right to continue coverage. Application for continued coverage shall be made in writing to OGB within 60 days of the date of the election notification.

3. Premium payment shall be made within 45 days of the date the continued coverage was elected, retroactive to the date coverage would have terminated. After the first payment for COBRA coverage, monthly payments for each subsequent month of COBRA coverage are due on the first day of the month for that month's COBRA coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

4. Coverage for the surviving dependents under this section will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 36 months beyond the date coverage would have otherwise terminated;

c. entitlement to Medicare;

d. date coverage begins under a group health plan; or

e. the employer ceases to provide any group health plan coverage for its employees.

C. Divorced Spouse

1. Coverage under OGB for an enrollee's spouse will terminate on the last day of the month during which dissolution of the marriage occurs by virtue of a legal decree of divorce from the enrollee, unless the covered divorced spouse elects to continue coverage at his/her own expense.

2. It is the responsibility of the divorced spouse to notify OGB within 60 days from the date of divorce and OGB will notify the divorced spouse within 14 days of his/her right to continue coverage. Application for continued coverage shall be made in writing to OGB within 60 days of the election notification.

3. Premium payment shall be made within 45 days of the date continued coverage is elected, for coverage retroactive to the date coverage would have otherwise terminated. After the first payment for COBRA coverage, monthly payments for each subsequent month of COBRA coverage are due on the first day of the month for that month's COBRA coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

4. Coverage for the divorced spouse under this Section will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 36 months beyond the date coverage would have otherwise terminated;

c. entitlement to Medicare;

d. date coverage begins under a group health plan; or

e. the employer ceases to provide any group health plan coverage for its employees.

D. Dependent Children

1. Coverage under an OGB plan for a covered dependent child of an enrollee will terminate on the last day of the month during which the dependent child no longer meets the definition of an eligible covered dependent, unless the dependent elects to continue coverage at his/her own expense.

2. It is the responsibility of the dependent to notify OGB within 60 days of the date coverage would have terminated and OGB will notify the dependent within 14 days of his/her right to continue coverage. Application for

continued coverage shall be made in writing to OGB within 60 days of receipt of the election notification.

3. Premium payment shall be made within 45 days of the date the continued coverage is elected, for coverage retroactive to the date coverage would have otherwise terminated. After the first payment for COBRA coverage, monthly payments for each subsequent month of COBRA coverage are due on the first day of the month for that month's COBRA coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

4. Coverage for children under this section will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 36 months beyond the date coverage would have otherwise terminated;

c. entitlement to Medicare;

d. date coverage begins under a group health plan; or

e. the employer ceases to provide any group health plan coverage for its employees.

E. Dependents of COBRA Participants

1. If a covered terminated employee has elected to continue coverage for him/herself and covered dependents, and the enrollee dies, divorces his/her spouse, or the covered dependent child no longer meets the definition of an eligible dependent during the COBRA coverage period, then the dependents may elect to continue COBRA coverage. Coverage will not be continued beyond 36 months from the employee terminated.

2. It is the responsibility of the spouse and/or the dependent child to notify OGB within 60 days of the date COBRA coverage would have terminated.

3. Monthly payments for each month of COBRA coverage are due on the first day of the month for that month's COBRA coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

4. Coverage for children under this section will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 36 months beyond the date coverage would have otherwise terminated;

c. entitlement to Medicare;

d. date coverage begins under a group health plan; or

e. the employer ceases to provide any group health plan coverage for its employees.

F. Disability COBRA

1. If a plan participant is determined by the Social Security Administration or by OGB (in the case of a person who is ineligible for Social Security disability benefits due to insufficient "quarters" of employment), to have been totally disabled on the date the plan participant became eligible for continued coverage or within the initial 18 months of coverage, coverage under an OGB plan for the plan participant who is totally disabled may be extended at his/her own expense up to a maximum of 29 months from the date the plan participant first became eligible for COBRA coverage.

2. To qualify, the plan participant shall:

a. submit a copy of his/her Social Security Administration's disability determination to OGB before the initial 18-month continued coverage period expires and within 60 days after the latest of:

i. the date of issuance of the Social Security Administration's disability determination; or

ii. the date on which the plan participant loses (or would lose) coverage under the terms of the OGB plan as a result of the enrollee’s termination or reduction of hours;

b. in the case of a person who is ineligible for Social Security disability benefits due to insufficient "quarters" of employment, submit proof of total disability to OGB before the initial 18-month continued coverage period expires. OGB will make the determination of total disability based upon medical evidence, not conclusions, presented by the applicant's physicians, work history, and other relevant evidence presented by the applicant.

3. For purposes of eligibility for continued coverage under this section, total disability means the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to last for a continuous period of 12 months. To meet this definition one shall have a severe impairment which makes one unable to do his/her previous work or any other substantial gainful activity which exists in the national economy, based upon a person's residual functional capacity, age, education, and work experience.

4. Monthly payments for each month of extended COBRA coverage are due on the first day of the month for that month's COBRA coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

5. Coverage under this section will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 29 months from the date coverage would have otherwise terminated;

c. entitlement to Medicare;

d. date coverage begins under a group health plan;

e. the employer ceases to provide any group health plan coverage for its employees; or

f. 30 days after the month in which the Social Security Administration determines that the plan participant is no longer disabled. (The plan participant shall report the determination to OGB within 30 days after the date of issuance by the Social Security Administration.) In the case of a person who is ineligible for Social Security disability benefits due to insufficient "quarters" of employment, 30 days after the month in which OGB determines that the plan participant is no longer disabled.

G. Medicare COBRA

1. If an enrollee becomes entitled to Medicare less than 18 months before the date the enrollee's eligibility for benefits under OGB terminates, the period of continued coverage available for the enrollee's covered dependents will continue until the earliest of the following:

a. failure to pay the applicable premium timely;

b. 36 months from the date of the enrollee's Medicare entitlement;

c. entitlement to Medicare;

d. date coverage begins under a group health plan; or

e. the employer ceases to provide any group health plan coverage for its employees.

2. Monthly payments for each month of COBRA coverage are due on the first day of the month for that month's COBRA coverage. A grace period of 30 days after the first day of the month will be provided for each monthly payment.

H. Miscellaneous Provisions

1. During the COBRA coverage period, benefits will be identical to those provided to others enrolled in an OGB plan under its standard eligibility provisions for enrollees.

2. In the event OGB contracts for COBRA administration services, OGB may direct each plan participant eligible for COBRA coverage to follow the directions provided by OGB's COBRA administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§323. Employer Responsibility

A. It is the responsibility of the participating employer to submit enrollment and coverage changes using OGB's electronic enrollment system and to review and certify all other necessary documentation to OGB on behalf of its employees. Employees of a participating employer will not, by virtue of furnishing any documentation to OGB be considered agents of OGB, and no representation made by any participating employer at any time will change the provisions of an OGB plan of benefits.

B. A participating employer shall immediately inform OGB when a retiree with OGB coverage returns to full-time employment. The enrollee shall be placed in the re-employed retiree category for premium calculation. The re-employed retiree premium classification applies to retirees with and without Medicare. The premium rates applicable to the re-employed retiree premium classification shall be identical to the premium rates applicable to the classification for retirees without Medicare.

C. A participating employer that receives a Medicare secondary payer (MSP) collection notice or demand letter shall deliver the MSP notice to OGB within 15 days of receipt. If timely forwarded, OGB will assume responsibility for medical benefits, interest, fines and penalties due to Medicare for a plan participant. If not timely forwarded, OGB will assume responsibility only for covered plan benefits due to Medicare for a plan participant. The participating employer will be responsible for interest, fines, and penalties due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 5. Uniform Provisions—Plan Administration

§501. Claims

A. To obtain the highest level of benefits available, the plan participant should always verify that a provider is a current network provider in the enrollee's plan of benefits before the service is rendered.

B. For OGB plan of benefits reimbursements, a claim shall include:

1. enrollee's name;
2. name of patient;
3. name, address, and telephone number of the provider of care;
4. diagnosis;
5. type of services rendered, with diagnosis and/or procedure codes that are valid and current for the date of service;
6. date and place of service;
7. charges;
8. enrollee's plan of benefits identification number;
9. provider tax identification number;
10. Medicare explanation of benefits, if applicable.

C. OGB or its agent may require additional documentation in order to determine the extent of coverage or the appropriate reimbursement. Failure to furnish information within the time period allowed by the respective OGB plan of benefits may constitute a reason for the denial of benefits.

D. A claim for benefits, under any self-funded plan of benefits offered by OGB shall be received by the enrollee's plan of benefits within one year from the date on which the medical expenses were incurred. The receipt date for electronically filed claims is the date on which the enrollee's plan of benefits receives the claim, not the date on which the claim is submitted to a clearinghouse or to the provider's practice management system.

E. Requests for review of payment or corrected bills shall be submitted within 12 months of receipt date of the original claim. Requests for review of payment or corrected bills received after that time will not be considered

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§503. Right to Receive and Release Information

A. To the extent permitted by federal or state law, OGB or its contractors may release to or obtain from any company, organization, or person, any information regarding any person which OGB or its contractors deem necessary to carry out the provisions of any OGB plan, or to determine how, or if, they apply. Any claimant under any OGB plan shall furnish OGB or its contractors with any information necessary to implement this provision. OGB or its contractors shall retain information for the minimum period of time required by law. After such time, information may no longer be available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§505. Automated Claims Adjusting

A. Any OGB plan of benefits may utilize commercially licensed software that applies all claims against its medical logic program to identify improperly billed charges and charges for which an OGB plan of benefits provides no benefits. Any claim with diagnosis or procedure codes deemed inadequate or inappropriate will be automatically reduced or denied. Providers accepting assignment of benefits cannot bill the plan participant for the differential on the denial amount, in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§507. Legal Limitations and Statement of Contractual Agreement

A. A plan participant's rights and benefits under any OGB plan of benefits are personal to him/her.

B. The OGB self-funded plan, as amended, including the schedule of benefits, together with the application for coverage and any related documents executed by or on behalf of the enrollee, constitute the entire agreement between the parties.

C. In the event of any conflict between the written provisions of the OGB plan or any OGB plan of benefits with any information provided by OGB or its contractors or rules or regulations promulgated by OGB, the written provisions of the OGB plan or plan of benefits shall supersede and control.

D. A plan participant shall exhaust the administrative claims review procedure before filing a suit for benefits. No legal action shall be brought to recover benefits under an OGB plan or plan of benefits more than one year after the time a claim is required to be filed or more than 30 days after mailing of the notice of a final administrative decision, whichever is later, unless otherwise provided in the terms of the participant's plan. A decision is not final until all levels of the administrative appeals process are exhausted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§509. Benefit Payments to Other Group Health Plans

A. When payments that should have been made under an OGB plan of benefits, have been made by another group health plan, OGB may pay to the other plan the sum proper to satisfy the terms of the enrollee's OGB plan benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§511. Recovery of Overpayments

A. If an overpayment occurs, OGB retains the right to recover the overpayment. The plan participant, institution, or provider receiving the overpayment must return the overpayment. At OGB's discretion, the overpayment may be deducted from future claims. Should legal action be required as a result of fraudulent statements or deliberate omissions on the application for coverage or a claim for benefits, the defendant shall be responsible for attorney fees of 25 percent of the overpayment or $1,000, whichever is greater. The defendant shall also be responsible for court costs and legal interest from the date of judicial demand until paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§513. Subrogation and Reimbursement

A. Upon payment of any eligible benefits covered under an OGB plan of benefits, OGB shall succeed and be subrogated to all rights of recovery of the plan participant or his/her heirs or assigns for whose benefit payment is made and he/she shall execute and deliver instruments and papers and do whatever is necessary to secure such rights and shall do nothing to prejudice such rights.

B. OGB has an automatic lien against and shall be entitled, to the extent of any payment made to a plan participant, to 100 percent of the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of a plan participant against any person or entity legally responsible for the disease, illness, accident, or injury for which said payment was made.

C. To this end, plan participants agree to immediately notify OGB or its agent of any action taken to attempt to collect any sums against any person or entity responsible for the disease, illness, accident, or injury.

D. These subrogation and reimbursement rights also apply, but are not limited to, when a plan participant recovers under an uninsured or underinsured motorist plan, homeowner's plan, renter's plan, medical malpractice plan, worker's compensation plan or any general liability plan.

E. Under these subrogation and reimbursement rights, OGB has a right of first recovery to the extent of any judgment, settlement, or any payment made to the plan participant, his/her heirs or assigns. These rights apply whether such recovery is designated as payment for pain and suffering, medical benefits, or other specified damages, even if he/she is not made whole (i.e., fully compensated for his/her injuries).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§515. Program Responsibility

A. OGB will administer its self-funded plans in accordance with the plan terms, state and federal law, and OGB's established policies, interpretations, practices, and procedures. OGB will have maximum legal discretionary authority to construe and interpret the terms and provisions of the plan and its plan of benefits, to make determinations regarding eligibility for benefits, and to decide disputes which may arise relative to a plan participant's rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§517. Amendments to or Termination of the OGB Plan

A. OGB has the statutory responsibility of providing life, health, and other benefit programs to the extent that funds are available. OGB reserves the right to terminate, amend, or make adjustment to the eligibility and benefit provisions of any OGB plan or any plan benefits from time to time as necessary to prudently discharge its duties. Except for the pharmacy benefits management program, such modifications will be promulgated subject to the applicable provisions of law. Nothing contained herein shall be construed to guarantee or vest benefits for any plan participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§519. Eligible Expenses

A. Eligible expenses are the charges incurred for the services, drugs, supplies, and devices covered by the applicable plan of benefits, when performed, prescribed, or ordered by a physician or other authorized provider under a

plan of benefits and medically necessary for the treatment of a plan participant. All charges are subject to applicable deductibles, co-payments, and/or co-insurance amounts, fee schedule limitations, schedule of benefits, limitations, exclusions, prior authorization requirements, benefit limits, drug utilization management, pharmacy benefits formulary, and other provisions of the plan of benefits. A charge is incurred on the date that the service, drug, supply, or device is performed or furnished.

B. Eligible expenses may be different depending on the plan of benefits selected by the enrollee. Eligible expenses for each plan of benefits are included in the respective plan document. OGB will make available a copy of its plan documents to its enrollees at the beginning of the plan year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§521. Severability

A. If any provision or item of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of these rules which can be given effect without the invalidated provisions, items, or applications and to this end the provisions of these rules are hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 7. Election Rules and Regulations

§701. Group Benefits Policy and Planning Board

Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§703. Candidate Eligibility

A. A candidate for a position on the Group Benefits Policy and Planning Board (OGB Board) must be a participant an OGB plan of benefits as of the specified election date.

B. If elected, the board member must continue to be a participant in an OGB plan of benefits during his/her tenure on the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§705. Petitions for Candidacy

A. To become a candidate, a person must be nominated by petition of 25 or more OGB plan enrollees from the ranks of the employees he/she will represent.

B. Each enrollee's signature must be accompanied by his/her Social Security number.

C. Each petition for candidacy must be signed by the appropriate agency head or his designated representative certifying that each candidate and each petitioner is a plan participant from the agency he/she will represent, and an active plan member on the specified election date.

D. Petitions for candidacy must be received by OGB on or before the date indicated on the election materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§707. Ballot Preparation and Distribution

A. Ballot positions of candidates will be determined by a drawing.

B. All candidates will be notified of the time and place of the drawing.

C. All candidates or his/her representative may attend the drawing.

D. Ballots and information sheets on candidates will be provided to eligible voters by OGB or its election vendor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§709. Balloting Procedure

A. All enrollees in an OGB plan of Benefits on the specified election date are eligible to vote.

B. Each eligible enrollee may cast only one vote for any candidate listed on the ballot.

C. Each eligible enrollee must follow the voting directions provided by OGB. In the event OGB contracts with an election vendor for a particular election, each eligible enrollee must follow the voting directions provided by OGB's election vendor for his/her vote to be counted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§711. Ballot Counting

A. The ballots will be counted by the ballot counting committee.

1. The ballot counting committee shall be composed of OGB employees appointed by the chief executive officer.

2. The ballot counting committee and all candidates will be notified at the time and date fixed for tallying the ballots.

3. The ballot counting committee will be responsible for the opening, preparation, and counting of the ballots.

4. All candidates or his/her representative may observe the ballot counting procedure.

B. In the event OGB contracts with an election vendor for a particular election, the election vendor will handle counting and verification of the ballots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§713. Election Results

A. The chief executive officer will certify the election results to the OGB Board.

B. The chief executive officer will notify the successful candidates of their election.

C. The OGB Board will announce the election results at the first regularly scheduled board meeting following the election.

D. The OGB Board will certify the election results to the Secretary of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§715. Uniform Election Dates

A. For each election date, the following dates will apply:

1. On the first Monday in March, OGB submits nomination sheets to each agency benefits coordinator.

2. The first Monday in April is the nomination cutoff date. Nominees must be certified by their agency before nominations can be accepted by OGB.

3. On the second Monday in April, OGB will hold the drawing at its principal office to determine the position each candidate will have on the ballot. All candidates are invited to attend or send a representative.

4. Prior to the first Monday in May, ballots will be sent to the proper authority for distribution.

5. The second Monday in June is the deadline for OGB to receive ballots.

6. By the third Monday in June, all ballots shall be counted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 7:122 (March 1981), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§717. Petition Form
[Formerly §719]

A. Nominating Petition. Nominations will be submitted on a form substantially in compliance with the following.

We the undersigned OGB enrollees hereby nominate _____ for membership on the Office of Group Benefits Policy and Planning Board.

Signature	Social Security Number	Agency	Date
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			

I hereby certify the persons signing this petition are OGB enrollees as of the specified election date.

_____
Agency Chief Personnel Officer

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 7:50 (February 1981), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§721. Severability

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 6:200 (May 1980), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 9. Managed Care Arrangements Contracting Criteria

§901. Notice of Intent to Contract

A. Notice of intent to contract with managed care arrangements shall be given by publication in the official journal of the State of Louisiana or by written direct solicitation setting forth OGB's intent to contract, describing the services sought, and providing a contact point for requesting a detailed explanation of the services sought and the criteria to be used in developing contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 25:859 (May 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§903. Managed Care Arrangements Criteria

A. The following criteria shall govern contracting with managed care arrangements for the OGB plan of benefits.

1. The managed care arrangement shall be appropriately licensed in accordance with the laws of this state.

2. The managed care arrangement shall execute a contract with OGB.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§905. Exclusive Provider Organization (EPO) Criteria

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 25:859 (May 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 11. Contributions

§1101. Collection and Deposit of Contributions

A. OGB shall be responsible for preparing and transmitting to each participating employer a monthly invoice premium statement delineating the enrolled employees of that agency as determined by the employer, each enrollee's class of coverage, total amount of employer and employee contributions due to OGB, and such other items as are deemed necessary by OGB.

B. It shall be the responsibility of the participating employer to reconcile the monthly invoice premium statement, collect employee contributions by payroll deduction or otherwise, and remit the reconciled monthly invoice premium statement and both the employer and employee contributions to OGB within 30 days after receipt of the monthly premium invoice statement.

C. Payments received by OGB shall be allocated as follows:

1. first, to any late payment penalty due by the participating employer;
2. second, to any balance due from prior invoices; and
3. third, to the amount due under the current invoice.

D. All employer and employee premium contributions for the payment of premiums for OGB offered coverage shall be deposited directly with OGB. OGB shall pay all monies due for such benefits as they become due and payable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 8:285 (June 1982), amended LR 26:2788 (December 2000), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§1103. Adjustments for Terminated Employees

A. Credit adjustments for premiums paid on behalf of enrollees whose coverage under an OGB plan of benefits is terminated by reason of termination of employment may not be made by the participating employer after reconciliation of the second invoice following the date of termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 26:2788 (December 2000), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§1105. Penalty for Late Payment of Premiums

A. If any participating employer fails to remit, in full, both the employer and employee contributions to OGB within 30 days after receipt of the monthly invoice premium statement, then at the request of OGB, the state treasurer shall withhold from state funds due the participating employer the full amount of the delinquent employer and employee contributions. The state treasurer shall remit this amount directly to OGB the participating employer shall pay a penalty equal to 1 percent of the total amount due and unpaid, compounded monthly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 26:2788 (December 2000), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§1107. State Contribution toward Retirees' Health Premiums

A. For any person who is an active employee, as defined by R.S. 42:808 or OGB rule, and who does not participate in an OGB plan of benefits before January 1, 2002, but subsequently enrolls in an OGB plan of benefits, or any person who commences employment with an OGB participating employer on or after January 1, 2002, the state contribution of the premium for participation in an OGB plan of benefits plan upon retirement shall be:

1. 19 percent for those persons with less than 10 years of participation in an OGB plan of benefits before retirement;
2. 38 percent for those persons with 10 years of participation but less than 15 years of participation in an OGB plan of benefits before retirement;
3. 56 percent for those persons with 15 years of participation but less than 20 years of participation in an OGB plan of benefits before retirement;
4. 75 percent for those persons with 20 or more years of participation in an OGB plan of benefits before retirement.

B. The foregoing schedule will also apply to the state contribution toward premiums for surviving spouse and/or surviving dependent coverage for survivors of employees who retire on or after January 1, 2002, if such spouse and dependents are not enrolled in an OGB plan of benefits before July 1, 2002.

C. This rule does not affect the contributions paid by the state for:

1. any participant who is a covered retiree before January 1, 2002;
2. any active employee who is enrolled in an OGB plan of benefits before January 1, 2002, and maintains continuous coverage through retirement;
3. surviving spouse and/or surviving dependent coverage for survivors of employees who retire on or after January 1, 2002, if such spouse and dependents are enrolled in an OGB plan of benefits before July 1, 2002, and continuous coverage is maintained until the employee's death.

D. For the purpose of determining the percentage of the state contribution toward premiums in accordance with this rule, the number of years of participation in OGB plan of benefits must be certified by the participating employer from which the employee retires on a form provided by OGB.

1. Such certification must be based upon business records maintained by the participating employer or provided by the employee.
2. Business records upon which certification is based must be available to OGB, the Division of Administration, and to the Legislative Auditor.
3. Not more than 120 days prior an employee's scheduled date of retirement, OGB will provide to the participating employer, upon request, all information in its possession relating to an employee's participation.
4. At the time of application for surviving spouse and/or surviving dependent coverage, OGB will provide, upon request, all information in its possession relating to

participation of such surviving spouse and/or surviving dependent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 28:306 (February 2002), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§1109. Retirees with Medicare Parts A and B

A. Employees who retire on or after July 1, 1997, shall receive a reduced premium rate when enrolled in Medicare Parts A and B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 28:306 (February 2002), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 13. Cost Assessment and Allocation

§1301. Cost Assessment and Allocation for FY 95/96

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:802(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees, State Employees Group Benefits Program, LR 21:591 (June 1995), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Part III. Primary Plan of Benefits

Chapter 1. Operation of Primary Plan

§101. HMO Plan Structure—Magnolia Local Plus

A. Pursuant to R.S. 42:851H(1), OGB has authority to designate a primary plan. The Magnolia Local Plus Plan is designated hereby as the OGB primary plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§103. Deductibles

Deductible Amount Per Benefit Period	
Individual:	
Network Providers	$500
Non-Network Providers	No Coverage
Family Unit Maximum:	
Network Providers	$1,500
Non-Network Providers	No Coverage

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§105. Out of Pocket Maximums

Out-of-Pocket Maximum Per Benefit Period (Includes All Eligible Copayments, Coinsurance Amounts and Deductibles)	
Individual:	
Network Providers	$3,000
Non-Network Providers	No Coverage
Family:	
Network Providers	$9,000
Non-Network Providers	No Coverage

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§107. Schedule of Benefits

A. Benefits, Copayments, and Coinsurance

	Copayments and Coinsurance	
	Network Providers	**Non-Network Providers**
Physician Office Visits including surgery performed in an office setting: • General Practice • Family Practice • Internal Medicine • OB/GYN • Pediatrics	$25 Copayment per Visit	No Coverage
Allied Health/Other Professional Visits: • Chiropractors • Federally Funded Qualified Rural Health Clinics • Nurse Practitioners • Retail Health Clinics • Physician Assistants	$25 Copayment per Visit	No Coverage
Specialist Office Visits including surgery performed in an office setting: • Physician • Podiatrist • Optometrist • Midwife • Audiologist • Registered Dietician • Sleep Disorder Clinic	$50 Copayment per Visit	No Coverage
Ambulance Services – Ground (*for Emergency Medical Transportation only*)	$50 Copayment	No Coverage
Ambulance Services – Air (*for Emergency Medical Transportation only*)	$250 Copayment	No Coverage
Ambulatory Surgical Center and Outpatient Surgical Facility	$100 Copayment[2]	No Coverage
Autism Spectrum Disorders (ASD)	$25/$50 Copayment[3] per Visit depending on Provider	No Coverage
Birth Control Devices – Insertion and Removal (*as listed in the Preventive and Wellness Article in the Benefit Plan*)	100% - 0%	No Coverage
Cardiac Rehabilitation (*limit of 48 visits per Plan Year*)	$25/$50 Copayment per day depending on Provider $50 Copayment – Outpatient	No Coverage

	Copayments and Coinsurance	
	Network Providers	**Non-Network Providers**
Chemotherapy/Radiation Therapy (*Authorization not required when performed in Physician's office*)	Office – $25 Copayment per Visit Outpatient Facility 100% - 0%[1,2]	No Coverage
Diabetes Treatment	80% - 20%[1]	No Coverage
Diabetic/Nutritional Counseling - Clinics and Outpatient Facilities	$25 Copayment	No Coverage
Dialysis	100% - 0%[1,2]	No Coverage
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20%[1,2] of first $5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of $5,000 per Plan Year	No Coverage
Emergency Room (*Facility Charge*)	$150 Copayment; Waived if Admitted	
Emergency Medical Services (*Non-Facility Charges*)	100% - 0%[1]	100% - 0%[1]
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (*purchased within six months following cataract surgery*)	Eyeglass Frames – Limited to a Maximum Benefit of $50[1,3]	No Coverage
Flu shots and H1N1 vaccines (*administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair*)	100% - 0%	No Coverage
Hearing Aids (*Hearing Aids are not covered for individuals age eighteen (18) and older.*)	80% - 20%[1,3]	No Coverage
Hearing Impaired Interpreter expense	100% - 0%[1]	No Coverage
High-Tech Imaging – Outpatient • CT Scans • MRA/MRI • Nuclear Cardiology • PET/SPECT Scans	$50 Copayment[2]	No Coverage
Home Health Care (*limit of 60 Visits per Plan Year*)	100% - 0%[1,2]	No Coverage
Hospice Care (*limit of 180 Days per Plan Year*)	100% - 0%[1,2]	No Coverage
Injections Received in a Physician's Office (*allergy and allergy serum*)	100% - 0%[1]	No Coverage
Inpatient Hospital Admission, All Inpatient Hospital Services Included	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Inpatient and Outpatient Professional Services for Which a Copayment Is Not Applicable	100% - 0%[1]	No Coverage

	Copayments and Coinsurance	
	Network Providers	**Non-Network Providers**
Mastectomy Bras – Ortho-Mammary Surgical (*limited to two (2) per Plan Year*)	80% - 20%[1,2] of first $5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of $5,000	No Coverage
Mental Health/Substance Abuse – Inpatient Treatment	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Mental Health/Substance Abuse – Outpatient Treatment	$25 Copayment per Visit	No Coverage
Newborn – Sick, Services excluding Facility	100% - 0%[1]	No Coverage
Newborn – Sick, Facility	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Oral Surgery (*Authorization not required when performed in Physician's office*)	100% - 0%[1,2]	No Coverage
Pregnancy Care – Physician Services	$90 Copayment per pregnancy	No Coverage
Preventive Care – Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (*For a complete list of benefits, refer to the Preventive and Wellness Article in the Benefit Plan.*)	100% - 0%[3]	No Coverage
Rehabilitation Services – Outpatient: • Physical/Occupational (*Limited to 50 Visits Combined PT/OT per Plan Year. Authorization required for visits over the Combined limit of 50.*) • Speech • Cognitive • Hearing Therapy	$25 Copayment per Visit	No Coverage
Skilled Nursing Facility – Network (*limit of 90 days per Plan Year*)	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Sonograms and Ultrasounds (*Outpatient*)	$50 Copayment	No Coverage
Urgent Care Center	$50 Copayment	No Coverage

	Copayments and Coinsurance	
	Network Providers	Non-Network Providers
Vision Care (Non-Routine) Exam	$25/$50 Copayment depending on Provider	No Coverage
X-ray and Laboratory Services (*low-tech imaging*)	100% - 0%	No Coverage
[1]Subject to Plan Year Deductible [2]Pre-Authorization Required [3]Age and/or Time Restrictions Apply		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§109. Prescription Drug Benefits

A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1- Generic	50% up to $30
Tier 2- Preferred	50% up to $55
Tier 3- Non-preferred	65% up to $80
Tier 4- Specialty	50% up to $80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable co-payment
Co-Payment after the Out Of Pocket Amount of $1,500 Is Met	
Tier 1- Generic	$0
Tier 2- Preferred	$20
Tier 3- Non-preferred	$40
Tier 4- Specialty	$40
Prescription drug benefits-31 day refill	
Plan pays balance of eligible expenses	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the $1,500 out of pocket maximum	
Medications available over-the-counter in the same prescribed strength will no longer be covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.	

B. OGB shall have discretion to adopt a pharmacy benefits formulary to help enrollees select the most appropriate, lowest-cost options. The formulary will be reviewed on a quarterly basis to reassess drug tiers based on the current prescription drug market. The formulary may be changed from time to time subject to any applicable advance notice requirements. The amount enrollees pay toward prescription medications will depend on whether they purchase a generic, preferred brand, non-preferred brand, or specialty drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 2. Termination of Coverage

§201. Active Employee and Retired Employee Coverage

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1888 (October 2006), repealed LR 40:

§203. Dependent Coverage

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1888 (October 2006), repealed LR 40:

Chapter 3. Medical Benefits

§301. Eligible Expenses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:480 (March 2002), LR 29:339, 343 (March 2003), LR 30:1192 (June 2004), LR 31:441 (February 2005), LR 32:1888 (October 2006), LR 32:1898 (October 2006), LR 34:646 (April 2008), LR 34:646 (April 2008), effective May 1, 2008, LR 34:649 (April 2008), effective May 1, 2008, LR 34:2562 (December 2008), effective January 1, 2009, LR 36:2287 (October 2010), repealed LR 40:

§303. Fee Schedule

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1832 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), repealed LR 40:

§305. Automated Claims Adjusting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1832 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), repealed LR 40:

§307. Utilization Review—Pre-Admission Certification, Continued Stay Review

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1832 (October 1999), amended by the

Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), repealed LR 40:

§309. Outpatient Procedure Certification (OPC)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1832 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), LR 32:2253 (December 2006), repealed LR 40:

§311. Case Management

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1833 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), repealed LR 40:

§313. Dental Surgical Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1833 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1890 (October 2006), repealed LR 40:

§315. Medicare and OGB

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1833 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1891 (October 2006), LR 34:648 (April 2008), repealed LR 40:

§317. Exceptions and Exclusions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1834 (October 1999), amended LR 26:488 (March 2000), LR 27:720 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:2343 (November 2002), LR 31:441 (February 2005), LR 32:1891 (October 2006), LR 34:647 (April 2008), effective May 1, 2008, repealed LR 40:

§321. Preferred Provider Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1835 (October 1999), amended LR 27:722 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:339 (March 2003), LR 32:1892 (October 2006), repealed LR 40:

§323. Prescription Drug Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1835 (October 1999), amended LR 27:720, 721 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:2344 (November 2002), LR 29:342 (March 2003), LR 32:1892 (October 2006), LR 32:2254 (December 2006), LR 36:2286 (October 2010), repealed LR 40:

Chapter 4. Uniform Provisions

§401. Statement of Contractual Agreement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1836 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1893 (October 2006), repealed LR 40:

§403. Properly Submitted Claim

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1836 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1893 (October 2006), repealed LR 40:

§405. When Claims Must Be Filed

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1836 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:479 (March 2002), LR 32:1893 (October 2006), repealed LR 40:

§407. Right to Receive and Release Information

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1836 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1893 (October 2006), repealed LR 40:

§409. Legal Limitations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1836 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:479 (March 2002), LR 32:1893 (October 2006), repealed LR 40:

§411. Benefit Payments to Other Group Health Plans

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1837 (October 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§413. Recovery of Overpayments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1837 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:479 (March 2002), LR 32:1893 (October 2006), repealed LR 40:

§415. Subrogation and Reimbursement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1837 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1893 (October 2006), repealed LR 40:

§417. Employer Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1837 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:1819 (September 2003), LR 32:1894 (October 2006), repealed LR 40:

§419. Program Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1837 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1894 (October 2006), repealed LR 40:

§421. Reinstatement to Position following Civil Service Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1837 (October 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§423. Amendments to or Termination of the Plan and/or Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1838 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1894 (October 2006), repealed LR 40:

Chapter 5. Claims Review and Appeal

§501. Administrative Review

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1838 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:479 (March 2002), LR 28:2344 (November 2002), repealed LR 40:

§503. Appeals from Medical Necessity Determinations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801.C and 802.B.(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 25:1838 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:479 (March 2002), LR 28:2344 (November 2002), repealed LR 40:

Chapter 6. Definitions

§601. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:339 (March 2003), LR 32:1894 (October 2006), LR 35:66 (January 2009), repealed LR 40:

Chapter 7. Schedule of Benefits—PPO

§701. Comprehensive Medical Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1843 (October 1999), amended LR 26:488 (March 2000), LR 27:719, 720, 722 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:2345 (November 2002), LR 29:340, 342, 343 (March 2003), repromulgated LR 29:578 (April 2003), amended LR 30:1192 (June 2004), LR 32:1897 (October 2006), LR 33:644 (April 2007), LR 33:1122 (June 2007), LR 34:646 (April 2008), effective May 1, 2008, LR 36:2287 (October 2010), repealed LR 40:

§703. Mental Health and Substance Abuse

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1844 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:340 (March 2003), LR 36:2286 (October 2010), repealed LR 40:

Part V. Additional Plans and Operations

Chapter 1. Authority for OGB Alternative Plan Options

§101. OGB Authority

A. Pursuant to R.S. 42:851H(1) OGB may adopt, administer, operate, or contract for all or a portion of the administration, operation, or both of a primary self-funded program or additional programs with premium rate structures and state contribution rates which are different from the primary program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§103. Continued Coverage

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees, State Employees Group Benefits Program, LR 25:1806 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits LR 30:1190 (June 2004), LR 32:1856 (October 2006), repealed LR 40:

§105. COBRA

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1807 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1857 (October 2006), repealed LR 40:

§107. Change of Classification

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1809 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1859 (October 2006), repealed LR 40:

§109. Contributions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1809 (October 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 2. PPO Plan Structure - Magnolia Open Access Plan

§201. Deductibles

Deductible Amount Per Benefit Period:	Network	Non-Network
Individual:	$1,000	$1,000
Family:	$3,000	$3,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1809 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1860 (October 2006), repealed LR 40:

§203. Out of Pocket Maximums

Out-of-Pocket Maximum Per Benefit Period: *Includes All Eligible Deductibles, Coinsurance Amounts and Copayments*	Network	Non-Network
Individual:	$3,000	$4,000
Family:	$9,000	$12,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§205. Schedule of Benefits

A. Benefits and Coinsurance

	Coinsurance		
	Active Employees/ Non-Medicare Retirees		Retirees with Medicare
	Network Providers	Non-Network Providers	Network and Non-Network Providers
Physician Office Visits including surgery performed in an office setting: • General Practice • Family Practice • Internal Medicine • OB/GYN • Pediatrics	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Allied Health/Other Professional Visits: • Chiropractors • Federally Funded Qualified Rural Health Clinics • Nurse Practitioners • Retail Health Clinics • Optometrists • Physician Assistants	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Specialist (Physician) Office Visits including surgery performed in an office setting: • Physician • Podiatrist • Midwife • Audiologist • Registered Dietician • Sleep Disorder Clinic	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]

	Coinsurance		
	Active Employees/ Non-Medicare Retirees		Retirees with Medicare
	Network Providers	Non-Network Providers	Network and Non-Network Providers
Ambulance Services – Ground (*for Medically Necessary Transportation only*)	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Ambulance Services – Air (*for Medically Necessary Transportation only*)	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Ambulatory Surgical Center and Outpatient Surgical Facility	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]
Autism Spectrum Disorders (ASD)	90% - 10%[1,3]	70% - 30%[1,3]	80% - 20%[1,3]
Birth Control Devices – Insertion and Removal (*as listed in the Preventive and Wellness Care Article in the Benefit Plan)*	100% - 0%	70% - 30%[1]	Network Providers 100% - 0% Non-Network Providers 80% - 20%[1]
Cardiac Rehabilitation (*must begin within six months of qualifying event)*	90% - 10%[1,2,3]	70% - 30%[1,2,3]	80% - 20%[1,3]
Chemotherapy/Radiation Therapy	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Diabetes Treatment	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Diabetic/Nutritional Counseling – Clinics and Outpatient Facilities	90% - 10%[1]	Not Covered	80% - 20%[1]
Dialysis	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]
Emergency Room (*Facility Charge*)	$150 Separate Deductible[1]; Waived if Admitted		
Emergency Medical Services (*Non-Facility Charges*)	90% - 10%[1]	90% - 10%[1]	80% - 20%[1]
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (*purchased within six months following cataract surgery*)	Eyeglass Frames – Limited to a Maximum Benefit of $50[1,3]		
Flu shots and H1N1 vaccines (*administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair*)	100% - 0%	100% - 0%	100% - 0%
Hearing Aids (*Hearing Aids are not covered for individuals age eighteen (18) and older*)	90% - 10%[1,3]	70% - 30%[1,3]	80% - 20%[1,3]
High-Tech Imaging – Outpatient • CT Scans • MRA/MRI • Nuclear Cardiology • PET/SPECT Scans	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]
Home Health Care (*limit of 60 Visits per Plan Year)*	90% - 10%[1,2]	70% - 30%[1,2]	Not Covered
Hospice Care (*limit of 180 Days per Plan Year)*	80% - 20%[1,2]	70% - 30%[1,2]	Not Covered
Injections Received in a Physician's Office (*when no other health service is received*)	90% -10%[1]	70% - 30%[1]	80% - 20%[1]
Inpatient Hospital Admission, All Inpatient Hospital Services Included *Per Day Copayment* *Day Maximum* *Coinsurance*	$0 Not Applicable 90% - 10%[1,2]	$50 5 Days 70% - 30%[1,2]	$0 Not Applicable 80% - 20%[1]
Inpatient and Outpatient Professional Services	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Mastectomy Bras – Ortho-Mammary Surgical (*limit of three (3) per Plan Year*)	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]

	Coinsurance		
	Active Employees/ Non-Medicare Retirees		Retirees with Medicare
	Network Providers	Non-Network Providers	Network and Non-Network Providers
Mental Health/Substance Abuse – Inpatient Treatment *Per Day Copayment* *Day Maximum* *Coinsurance*	$0 Not Applicable 90% - 10%[1,2]	$50 5 Days 70% - 30%[1,2]	$0 Not Applicable 80% - 20%[1]
Mental Health/Substance Abuse – Outpatient Treatment	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Newborn – Sick, Services Excluding Facility	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Newborn – Sick, Facility *Per Day Copayment* *Day Maximum* *Coinsurance*	$0 Not Applicable 90% - 10%[1,2]	$50 5 Days 70% - 30%[1,2]	$0 Not Applicable 80% - 20%[1]
Oral Surgery for Impacted Teeth (*Authorization not required when performed in Physician's office*)	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]
Pregnancy Care – Physician Services	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Preventive Care – Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (*For a complete list of benefits, refer to the Preventive and Wellness Care Article in the Benefit Plan.*)	100% - 0%[3]	70% - 30%[1,3]	Network 100% - 0[3] Non-Network 80% - 20%[1,3]
Rehabilitation Services – Outpatient: • Speech • Physical/Occupational (*Limited to 50 Visits Combined PT/OT per Plan Year. Authorization required for visits over the Combined limit of 50.)* *(Visit limits do not apply when services are provided for Autism Spectrum Disorders)*	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Skilled Nursing Facility (*limit 90 days per Plan Year*)	90% - 10%[1,2]	70% - 30%[1,2]	80% - 20%[1]
Sonograms and Ultrasounds (*Outpatient*)	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Urgent Care Center	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
Vision Care (Non-Routine) Exam	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
X-ray and Laboratory Services (*low-tech imaging*)	90% - 10%[1]	70% - 30%[1]	80% - 20%[1]
[1]Subject to Plan Year Deductible [2]Pre-Authorization Required [3]Age and/or Time Restrictions Apply			

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§207. Prescription Drug Benefits

A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1- Generic	50% up to $30
Tier 2- Preferred	50% up to $55
Tier 3- Non-preferred	65% up to $80
Tier 4- Specialty	50% up to $80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable co-payment
Co-Payment after the Out Of Pocket Amount of $1,500 Is Met	
Tier 1- Generic	$0
Tier 2- Preferred	$20
Tier 3- Non-preferred	$40
Tier 4- Specialty	$40
Prescription drug benefits-31 day refill	
Plan pays balance of eligible expenses	

Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the $1,500 out of pocket maximum
Medications available over-the-counter in the same prescribed strength will no longer be covered under the pharmacy plan.
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.

B. OGB shall have discretion to adopt a pharmacy benefits formulary to help enrollees select the most appropriate, lowest-cost options. The formulary will be reviewed on a quarterly basis to reassess drug tiers based on the current prescription drug market. The formulary may be changed from time to time subject to any applicable advance notice requirements. The amount enrollees pay toward prescription medications will depend on whether they purchase a generic, preferred brand, non-preferred brand, or specialty drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 3. Narrow Network HMO Plan Structure—Magnolia Local Plan (in certain geographical areas)

§301. Deductibles

Deductible Amount Per Benefit Period:	
Individual:	
Network Providers:	$500
Non-Network Providers:	No Coverage
Family Unit Maximum:	
Network Providers:	$1,500
Non-Network Providers:	No Coverage

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§303. Out of Pocket Maximums

Out-of-Pocket Maximum Per Benefit Period (Includes All Eligible Copayments, Coinsurance Amounts and Deductibles):	
Individual:	
Network Providers:	$3,000
Non-Network Providers:	No Coverage
Family:	
Network Providers:	$9,000
Non-Network Providers:	No Coverage

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§305. Schedule of Benefits

A. Benefits, Copayments, and Coinsurance

	Copayments and Coinsurance	
	Network Providers	**Non-Network Providers**
Physician Office Visits including surgery performed in an office setting: • General Practice • Family Practice • Internal Medicine • OB/GYN • Pediatrics	$25 Copayment per Visit	No Coverage
Allied Health/Other Professional Visits: • Chiropractors • Federally Funded Qualified Rural Health Clinics • Nurse Practitioners • Retail Health Clinics • Physician Assistants	$25 Copayment per Visit	No Coverage
Specialist Office Visits including surgery performed in an office setting: • Physician • Podiatrist • Optometrist • Midwife • Audiologist • Registered Dietician • Sleep Disorder Clinic	$50 Copayment per Visit	No Coverage

	Copayments and Coinsurance	
	Network Providers	**Non-Network Providers**
Ambulance Services – Ground (*for Emergency Medical Transportation only*)	$50 Copayment	No Coverage
Ambulance Services – Air (*for Emergency Medical Transportation only*)	$250 Copayment	No Coverage
Ambulatory Surgical Center and Outpatient Surgical Facility	$100 Copayment[2]	No Coverage
Autism Spectrum Disorders (ASD)	$25/$50 Copayment[3] per Visit depending on Provider	No Coverage
Birth Control Devices – Insertion and Removal (*as listed in the Preventive and Wellness Article in the Benefit Plan.*)	100% - 0%	No Coverage
Cardiac Rehabilitation (*limit of 48 visits per Plan Year*)	$25/$50 Copayment per day depending on Provider $50 Copayment – Outpatient Facility[2]	No Coverage
Chemotherapy/Radiation Therapy (*Authorization not required when performed in Physician's office*)	Office – $25 Copayment per Visit Outpatient Facility 100% - 0%[1,2]	No Coverage
Diabetes Treatment	80% - 20%[1]	No Coverage
Diabetic/Nutritional Counseling – Clinics and Outpatient Facilities	$25 Copayment	No Coverage
Dialysis	100% - 0%[1,2]	No Coverage
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20%[1,2] of first $5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of $5,000 per Plan Year	No Coverage
Emergency Room (*Facility Charge*)	$150 Copayment; Waived if Admitted	
Emergency Medical Services (*Non-Facility Charges*)	100% - 0%[1]	100% - 0%[1]
Eyeglass Frames and One Pair of Eyeglass Lenses or One Pair of Contact Lenses (*purchased within six months following cataract surgery*)	Eyeglass Frames – Limited to a Maximum Benefit of $50[1,3]	No Coverage
Flu shots and H1N1 vaccines (*administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair*)	100% - 0%	No Coverage
Hearing Aids (*Hearing Aids are not covered for individuals age eighteen (18) and older.*)	80% - 20%[1,3]	No Coverage
Hearing Impaired Interpreter expense	100% - 0%[1]	No Coverage
High-Tech Imaging – Outpatient • CT Scans • MRA/MRI • Nuclear Cardiology • PET/SPECT Scans	$50 Copayment[2]	No Coverage
Home Health Care (*limit of 60 Visits per Plan Year*)	100% - 0%[1,2]	No Coverage
Hospice Care (*limit of 180 Days per Plan Year*)	100% - 0%[1,2]	No Coverage
Injections Received in a Physician's Office (*allergy and allergy serum*)	100% - 0%[1]	No Coverage
Inpatient Hospital Admission, All Inpatient Hospital Services Included	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Inpatient and Outpatient Professional Services for Which a Copayment Is Not Applicable	100% - 0%[1]	No Coverage

	Copayments and Coinsurance	
	Network Providers	**Non-Network Providers**
Mastectomy Bras – Ortho-Mammary Surgical (*limited to two (2) per Plan Year*)	80% - 20%[1,2] of first $5,000 Allowable per Plan Year; 100% - 0% of Allowable in Excess of $5,000 per Plan Year	No Coverage
Mental Health/Substance Abuse – Inpatient Treatment	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Mental Health/Substance Abuse – Outpatient Treatment	$25 Copayment per Visit	No Coverage
Newborn – Sick, Services excluding Facility	100% - 0%[1]	No Coverage
Newborn – Sick, Facility	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Oral Surgery (*Authorization not required when performed in Physician's office*)	100% - 0%[1,2]	No Coverage
Pregnancy Care – Physician Services	$90 Copayment per pregnancy	No Coverage
Preventive Care – Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (*For a complete list of benefits, refer to the Preventive and Wellness Article in the Benefit Plan.*)	100% - 0%[3]	No Coverage
Rehabilitation Services – Outpatient: • Physical/Occupational (*Limited to 50 Visits Combined PT/OT per Plan Year. Authorization required for visits over the Combined limit of 50.*) • Speech • Cognitive • Hearing Therapy	$25 Copayment per Visit	No Coverage
Skilled Nursing Facility – Network (*limit of 90 days per Plan Year*)	$100 Copayment per day[2], maximum of $300 per Admission	No Coverage
Sonograms and Ultrasounds (*Outpatient*)	$50 Copayment	No Coverage
Urgent Care Center	$50 Copayment	No Coverage
Vision Care (Non-Routine) Exam	$25/$50 Copayment depending on Provider	No Coverage
X-ray and Laboratory Services (*low-tech imaging*)	100% - 0%	No Coverage
[1]Subject to Plan Year Deductible [2]Pre-Authorization Required [3]Age and/or Time Restrictions Apply		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§307. Prescription Drug Benefits

A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1- Generic	50% up to $30
Tier 2- Preferred	50% up to $55
Tier 3- Non-preferred	65% up to $80
Tier 4- Specialty	50% up to $80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable co-payment
Co-Payment after the Out Of Pocket Amount of $1,500 Is Met	
Tier 1- Generic	$0
Tier 2- Preferred	$20
Tier 3- Non-preferred	$40
Tier 4- Specialty	$40
Prescription drug benefits-31 day refill	
Plan pays balance of eligible expenses	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the $1,500 out of pocket maximum	
Medications available over-the-counter in the same prescribed strength will no longer be covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.	

B. OGB shall have discretion to adopt a pharmacy benefits formulary to help enrollees select the most appropriate, lowest-cost options. The formulary will be reviewed on a quarterly basis to reassess drug tiers based on the current prescription drug market. The formulary may be changed from time to time subject to any applicable advance notice requirements. The amount enrollees pay toward prescription medications will depend on whether they purchase a generic, preferred brand, non-preferred brand, or specialty drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§309. Outpatient Procedure Certification (OPC)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1812 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1862 (October 2006), LR 32:2253 (December 2006), repealed LR 40:

§311. Case Management

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1812 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1862 (October 2006), repealed LR 40:

§313. Dental Surgical Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1813 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1862 (October 2006), repealed LR 40:

§315. Medicare and OGB

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1813 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1862 (October 2006), LR 34:648 (April 2008), repealed LR 40:

§317. Exceptions and Exclusions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1813 (October 1999), amended LR 26:487 (March 2000), LR 27:717 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:2340 (November 2002), LR 31:440 (February 2005), LR 32:1863 (October 2006), LR 34:647 (April 2008), effective May 1. 2008, repealed LR 40:

§319. Coordination of Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1814 (October 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§321. Exclusive Provider Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1814 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1864 (October 2006), repealed LR 40:

§325. Prescription Drug Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802 (B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1815 (October 1999), amended LR 27:717 (May 2001), LR 27:718 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:2340 (November 2002), LR 29:337 (March 2003), LR 32:1864 (October 2006), LR 32:2254 (December 2006), repealed LR 40:

Chapter 4. PPO/Consumer-Driven Health Plan Structure - Pelican HSA 775 Plan

§401. Deductibles

Deductible Amount Per Benefit Period:	Network	Non-Network
Individual:	$2,000	$4,000
Family:	$4,000	$8,000
Coinsurance:	**Plan**	**Plan Participant**
Network Providers	80%	20%
Non-Network Providers	60%	40%

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§403. Out of Pocket Maximums

A. Out-of-Pocket Maximum Per Benefit Period:

Includes All Eligible Deductibles Coinsurance Amounts an Prescription Drug Copayments:		
	Network	Non-Network
Individual:	$5,000	$10,000
Family:	$10,000	$20,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§405. Schedule of Benefits

A. Benefits and Coinsurance

	Coinsurance	
	Network Providers	**Non-Network Providers**
Physician's Office Visits including surgery performed in an office setting: • General Practice • Family Practice • Internal Medicine • OB/GYN • Pediatrics	80% - 20%[1]	60% - 40%[1]
Allied Health/Other Office Visits: • Chiropractors • Federally Funded Qualified Rural Health Clinics • Retail Health Clinics • Nurse Practitioners • Physician's Assistants	80% - 20%[1]	60% - 40%[1]
Specialist Office Visits including surgery performed in an office setting: • Physician • Podiatrist • Optometrist • Midwife • Audiologist • Registered Dietician • Sleep Disorder Clinic	80% - 20%[1]	60% - 40%[1]
Ambulance Services (*for Emergency Medical Transportation Only*) • Ground Transportation • Air Ambulance	80% - 20%[1]	80% - 20%[1]
Ambulatory Surgical Center and Outpatient Surgical Facility	80% - 20%[1,2]	60% - 40%[1,2]
Autism Spectrum Disorders (ASD) – Office Visits	80% - 20%[1,3]	60% - 40%[1,3]
Autism Spectrum Disorders (ASD) – Inpatient Hospital	80% - 20%[1,2]	60% - 40%[1,2]
Birth Control Devices – Insertion and Removal (*as listed in the Preventive and Wellness Article in the Benefit Plan*)	100% - 0%	60% - 40%[1]
Cardiac Rehabilitation (*must begin within six months of qualifying event; limited to 26 visits per Plan Year*)	80% - 20%[1,2,3]	60% - 40%[1,2,3]
Chemotherapy/Radiation Therapy (*Authorization not required when performed in Physician's office*)	80% - 20%[1,2]	60% - 40%[1,2]
Diabetes Treatment	80% - 20%[1]	60% - 40%[1]
Diabetic/Nutritional Counseling – Clinics and Outpatient Facilities	80% - 20%[1]	Not Covered
Dialysis	80% - 20%[1,2]	60% - 40%[1,2]
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20%[1,2]	60% - 40%[1,2]
Emergency Room (*Facility Charge*)	80% - 20%[1]	80% - 20%[1]
Emergency Medical Services (*Non-Facility Charge*)	80% - 20%[1]	80% - 20%[1]
Flu Shots and H1N1 vaccines (administered *at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair*)	100% - 0%	100% - 0%
Hearing Aids (*Hearing Aids are not covered for individuals age eighteen (18) and older*)	80% - 20%[1,3]	Not Covered
High-Tech Imaging – Outpatient[2] (*CT Scans, MRI/MRA, Nuclear Cardiology, PET/SPECT Scans*)	80% - 20%[1,2]	60% - 40%[1,2]
Home Health Care (*limit of 60 Visits per Plan Year, combination of Network and Non-Network) (one Visit = 4 hours*)	80% - 20%[1,2]	60% - 40%[1,2]
Hospice Care (*limit of 180 Days per Plan Year, combination of Network and Non-Network*)	80% - 20%[1,2]	60% - 40%[1,2]

	Coinsurance	
	Network Providers	**Non-Network Providers**
Injections Received in a Physician's Office (*when no other health service is received*)	80% - 20%[1] per injection	60% - 40%[1] per injection
Inpatient Hospital Admission (*all Inpatient Hospital services included*)	80% - 20%[1,2]	60% - 40%[1,2]
Inpatient and Outpatient Professional Services	80% - 20%[1]	60% - 40%[1]
Mastectomy Bras – Ortho-Mammary Surgical (*limited to two (2) per Plan Year*)	80% - 20%[1,2]	60% - 40%[1,2]
Mental Health/Substance Abuse – Inpatient Treatment	80% - 20%[1,2]	60% - 40%[1,2]
Mental Health/Substance Abuse – Outpatient Treatment	80% - 20%[1]	60% - 40%[1]
Newborn – Sick, Services excluding Facility	80% - 20%[1]	60% - 40%[1]
Newborn – Sick, Facility	80% - 20%[1,2]	60% - 40%[1,2]
Oral Surgery for Impacted Teeth (*Authorization not required when performed in Physician's office*)	80% - 20%[1,2]	60% - 40%[1,2]
Pregnancy Care – Physician Services	80% - 20%[1]	60% - 40%[1]
Preventive Care – Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (*For a complete list of benefits, refer to the Preventive and Wellness/Routine Care Article in the Benefit Plan*.)	100% - 0%[3]	100% - 0%[3]
Rehabilitation Services – Outpatient: • Physical/Occupational (*Limited to 50 Visits Combined PT/OT per Plan Year. Authorization required for visits over the Combined limit of 50.)* • Speech (*Visit limits are a combination of Network and Non-Network Benefits*; *visit limits do not apply when services are provided for Autism Spectrum Disorders.*)	80% - 20%[1]	60% - 40%[1]
Skilled Nursing Facility (*limit 90 Days per Plan Year*)	80% - 20%[1,2]	60% - 40%[1,2]
Sonograms and Ultrasounds – Outpatient	80% - 20%[1]	60% - 40%[1]
Urgent Care Center	80% - 20%[1]	60% - 40%[1]
Vision Care (Non-Routine) Exam	80% - 20%[1]	60% - 40%[1]
X-Ray and Laboratory Services (*low-tech imaging*)	80% - 20%[1]	60% - 40%[1]
[1]Subject to Plan Year Deductible [2]Pre-Authorization Required [3]Age and/or Time Restrictions Apply		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§407. Prescription Drug Benefits

A. Prescription Drug Benefits

Network Pharmacy	Member pays
Generic	$10 co-pay
Preferred	$25 co-pay
Non-preferred	$50 co-pay
Specialty	$50 co-pay
Prescription drug benefits-31 day refill	
Maintenance drugs: not subject to deductible; subject to applicate co-payments above.	
Plan pays balance of eligible expenses	
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug	
Medications available over-the-counter in the same prescribed strength will no longer be covered under the pharmacy plan.	
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.	
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.	

B. OGB shall have discretion to adopt a pharmacy benefits formulary to help enrollees select the most appropriate, lowest-cost options. The formulary will be

reviewed on a quarterly basis to reassess drug tiers based on the current prescription drug market. The formulary may be changed from time to time subject to any applicable advance notice requirements. The amount enrollees pay toward prescription medications will depend on whether they purchase a generic, preferred brand, non-preferred brand, or specialty drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1865 (October 2006), repealed LR 40:

§409. Legal Limitations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1816 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:477 (March 2002), amended, LR 32:1865 (October 2006), repealed LR 40:

§411. Benefit Payment to Other Group Health Plans

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1816 (October 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§413. Recovery of Overpayments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1816 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1865 (October 2006), repealed LR 40:

§415. Subrogation and Reimbursement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1817 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1865 (October 2006), repealed LR 40:

§417. Employer Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1817 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:1819 (September 2003), LR 32:1866 (October 2006), repealed LR 40:

§419. Program Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802 (B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1817 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1866 (October 2006), repealed LR 40:

§421. Reinstatement to Position following Civil Service Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1817 (October 1999), repealed by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§423. Amendments to or Termination of the Plan and/or Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1818 (October 1999), by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 32:1866 (October 2006), repealed LR 40:

Chapter 5. PPO/Consumer-Driven Health Plan Structure—Pelican HRA 1000 Plan

§501. Deductibles

Deductible Amount Per Benefit Period:	Network	Non-Network
Individual:	$2,000	$4,000
Family:	$4,000	$8,000
Coinsurance:	**Plan**	**Plan Participant**
Network Providers	80%	20%
Non-Network Providers	60%	40%

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§503. Out of Pocket Maximums

A. Out-of-Pocket Maximum per Benefit Period

Includes All Eligible Deductibles, Coinsurance Amounts and Copayments		
	Network	Non-Network
Individual	$5,000	$10,000
Family	$10,000	$20,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§505. Schedule of Benefits

A. Benefits and Coinsurance

	Coinsurance	
	Network Providers	**Non-Network**
Physician's Office Visits including surgery performed in an office setting: • General Practice • Family Practice • Internal Medicine • OB/GYN • Pediatrics	80% - 20%[1]	60% - 40%[1]
Allied Health/Other Office Visits: • Chiropractors • Federally Funded Qualified Rural Health Clinics • Retail Health Clinics • Nurse Practitioners • Physician's Assistants	80% - 20%[1]	60% - 40%[1]
Specialist Office Visits including surgery performed in an office setting: • Physician • Podiatrist • Optometrist • Midwife • Audiologist • Registered Dietician • Sleep Disorder Clinic	80% - 20%[1]	60% - 40%[1]
Ambulance Services (*for Emergency Medical Transportation Only*) • Ground Transportation • Air Ambulance	80% - 20%[1]	80% - 20%[1]
Ambulatory Surgical Center and Outpatient Surgical Facility	80% - 20%[1,2]	60% - 40%[1,2]
Autism Spectrum Disorders (ASD) – Office Visits	80% - 20%[1,3]	60% - 40%[1,3]
Autism Spectrum Disorders (ASD) – Inpatient Hospital	80% - 20%[1,2]	60% - 40%[1,2]
Birth Control Devices – Insertion and Removal (*as listed in the Preventive and Wellness Article in the Benefit Plan*)	100% - 0%	60% - 40%[1]
Cardiac Rehabilitation (*must begin within six months of qualifying event; limited to 26 visits per Plan Year*)	80% - 20%[1,2,3]	60% - 40%[1,2,3]
Chemotherapy/Radiation Therapy (*Authorization not required when performed in Physician's office*)	80% - 20%[1,2]	60% - 40%[1,2]
Diabetes Treatment	80% - 20%[1]	60% - 40%[1]
Diabetic/Nutritional Counseling – Clinics and Outpatient Facilities	80% - 20%[1]	Not Covered
Dialysis	80% - 20%[1,2]	60% - 40%[1,2]
Durable Medical Equipment (DME), Prosthetic Appliances and Orthotic Devices	80% - 20%[1,2]	60% - 40%[1,2]
Emergency Room (*Facility Charge*)	80% - 20%[1]	80% - 20%[1]
Emergency Medical Services (*Non-Facility Charge*)	80% - 20%[1]	80% - 20%[1]
Flu Shots and H1N1 vaccines (*administered at Network Providers, Non-Network Providers, Pharmacy, Job Site or Health Fair*)	100% - 0%	100% - 0%
Hearing Aids (*Hearing Aids are not covered for individuals age eighteen (18) and older*)	80% - 20%[1,3]	Not Covered
High-Tech Imaging – Outpatient (*CT Scans, MRI/MRA, Nuclear Cardiology, PET/SPECT Scans*)	80% - 20%[1,2]	60% - 40%[1,2]

	Coinsurance	
	Network Providers	**Non-Network**
Home Health Care (*limit of 60 Visits per Plan Year, combination of Network and Non-Network) (one Visit = 4 hours*)	80% - 20%[1,2]	60% - 40%[1,2]
Hospice Care (*limit of 180 Days per Plan Year, combination of Network and Non-Network*)	80% - 20%[1,2]	60% - 40%[1,2]
Injections Received in a Physician's Office (*when no other health service is received*)	80% - 20%[1] per injection	60% - 40%[1] per injection
Inpatient Hospital Admission (*all Inpatient Hospital services included*)	80% - 20%[1,2]	60% - 40%[1,2]
Inpatient and Outpatient Professional Services	80% - 20%[1]	60% - 40%[1]
Mastectomy Bras – Ortho-Mammary Surgical (*limited to two (2) per Plan Year*)	80% - 20%[1,2]	60% - 40%[1,2]
Mental Health/Substance Abuse – Inpatient Treatment	80% - 20%[1,2]	60% - 40%[1,2]
Mental Health/Substance Abuse – Outpatient Treatment	80% - 20%[1]	60% - 40%[1]
Newborn – Sick, Services excluding Facility	80% - 20%[1]	60% - 40%[1]
Newborn – Sick, Facility	80% - 20%[1,2]	60% - 40%[1,2]
Oral Surgery for Impacted Teeth (*Authorization not required when performed in Physician's office*)	80% - 20%[1,2]	60% - 40%[1,2]
Pregnancy Care – Physician Services	80% - 20%[1]	60% - 40%[1]
Preventive Care – Services include screening to detect illness or health risks during a Physician office visit. The Covered Services are based on prevailing medical standards and may vary according to age and family history. (*For a complete list of benefits, refer to the Preventive and Wellness/Routine Care Article in the*	100% - 0%[3]	100% - 0%[3]
Rehabilitation Services – Outpatient: • Physical/Occupational (*Limited to 50 Visits Combined PT/OT per Plan Year. Authorization required for visits over the Combined limit of 50.*) • Speech (*Visit limits are a combination of Network and Non-Network Benefits*; *visit limits do not apply when services are provided for Autism Spectrum Disorders.*)	80% - 20%[1]	60% - 40%[1]
Skilled Nursing Facility (*limit 90 Days per Plan Year*)	80% - 20%[1,2]	60% - 40%[1,2]
Sonograms and Ultrasounds – Outpatient	80% - 20%[1]	60% - 40%[1]
Urgent Care Center	80% - 20%[1]	60% - 40%[1]
Vision Care (Non-Routine) Exam	80% - 20%[1]	60% - 40%[1]
X-Ray and Laboratory Services (*low-tech imaging*)	80% - 20%[1]	60% - 40%[1]
[1]Subject to Plan Year Deductible [2]Pre-Authorization Required [3]Age and/or Time Restrictions Apply		

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

§507. Prescription Drug Benefits

A. Prescription Drug Benefits

Network Pharmacy	Member pays
Tier 1- Generic	50% up to $30
Tier 2- Preferred	50% up to $55
Tier 3- Non-preferred	65% up to $80
Tier 4- Specialty	50% up to $80
90 day supplies for maintenance drugs from mail order OR at participating 90-day retail network pharmacies	Two and a half times the cost of your applicable co-payment
Co-Payment after the Out Of Pocket Amount of $1,500 Is Met	
Tier 1- Generic	$0
Tier 2- Preferred	$20
Tier 3- Non-preferred	$40
Tier 4- Specialty	$40
Prescription drug benefits-31 day refill	

Maintenance drugs: not subject to deductible; subject to applicate co-payments above.
Plan pays balance of eligible expenses
Member who chooses a brand-name drug for which an approved generic version is available, pays the cost difference between the brand-name drug & the generic drug, plus the co-pay for the brand-name drug; the cost difference does not apply to the $1,500 out of pocket maximum
Medications available over-the-counter in the same prescribed strength will no longer be covered under the pharmacy plan.
Smoking Cessation Medications: Benefits are available for Prescription and over-the-counter (OTC) smoking cessation medications when prescribed by a physician. (Prescription is required for over-the-counter medications). Smoking cessation medications are covered at 100%.
This plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor that require a prescription. Utilization management criteria may apply to specific drugs or drug categories to be determined by PBM.

B. OGB shall have discretion to adopt a pharmacy benefits formulary to help enrollees select the most appropriate, lowest-cost options. The formulary will be reviewed on a quarterly basis to reassess drug tiers based on the current prescription drug market. The formulary may be changed from time to time subject to any applicable advance notice requirements. The amount enrollees pay toward prescription medications will depend on whether they purchase a generic, preferred brand, non-preferred brand, or specialty drug.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 40:

Chapter 6. Definitions

§601. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1820 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:335 (March 2003), LR 32:1866 (October 2006), LR 35:67 (January 2009), repealed LR 40:

Chapter 7. Schedule of Benefits—EPO

§701. Comprehensive Medical Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees' Group Benefits Program, LR 25:1823 (October 1999), amended LR 26:487 (March 2000), LR 27:717 and 719 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:476 (March 2002), LR 28:2342, 2343 (November 2002), repromulgated LR 28:2509 (December 2002), amended LR 29:335, 337, 338 (March 2003), LR 30:1190 (June 2004), LR 32:1869 (October 2006), LR 33:644 (April 2007), LR 33:1122 (June 2007), LR 34:647 (April 2008), effective May 1, 2008, repealed LR 40:

§703. Mental Health and Substance Abuse

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1824 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:335 (March 2003), repealed LR 40:

Part IX. Managed Care Option (MCO)—Plan of Benefits

Chapter 1. Eligibility

§101. Persons to be Covered

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:883 (June 2003), amended LR 32:1870 (October 2006), repealed LR 40:

§103. Continued Coverage

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:885 (June 2003), amended LR 30:1191 (June 2004), LR 32:1870 (October 2006), repealed LR 40:

§105. COBRA

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:886 (June 2003), amended LR 32:1871 (October 2006), repealed LR 40:

§107. Change of Classification

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:887 (June 2003), amended LR 32:1874 (October 2006), repealed LR 40:

§109. Contributions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003), repealed LR 40:

Chapter 2. Termination of Coverage

§201. Active Employee and Retired Employee Coverage

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:888 (June 2003), amended LR 32:1874 (October 2006), repealed LR 40:

§203. Dependent Coverage Only

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:888 (June 2003), amended LR 32:1874 (October 2006), repealed LR 40:

Chapter 3. Medical Benefits

§301. Eligible Expenses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:888 (June 2003), amended LR 30:1191 (June 2004), LR 31:440 (February 2005), LR 32:1874 (October 2006), LR 32:1899 (October 2006), repealed LR 40:

§303. Fee Schedule

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003), amended LR 32:1876 (October 2006), repealed LR 40:

§305. Automated Claims Adjusting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003), amended LR 32:1876 (October 2006), repealed LR 40:

§307. Utilization Review—Pre-Admission Certification, Continued Stay Review

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:890 (June 2003), amended LR 32:1876 (October 2006), repealed LR 40:

§309. Outpatient Procedure Certification (OPC)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003), amended LR 32:1877 (October 2006), LR 32:2253 (December 2006), repealed LR 40:

§311. Case Management

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003), amended LR 32:1877 (October 2006), repealed LR 40:

§313. Dental Surgical Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003), amended LR 32:1877 (October 2006), repealed LR 40:

§315. Medicare Reduction

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:891 (June 2003), amended LR 32:1877 (October 2006), repealed LR 40:

§317. Exceptions and Exclusions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 25:1834 (October 1999), amended LR 26:488 (March 2000), LR 27:720 (May 2001), LR 28:2343 (November 2002), LR 29:892 (June 2003), LR 31:441 (February 2005), LR 32:1877 (October 2006), repealed LR 40:

§319. Coordination of Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003), repealed LR 40:

§321. Managed Care Option

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003), repealed LR 40:

§323. Prescription Drug Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:893 (June 2003), amended LR 32:1878 (October 2006), LR 32:2255 (December 2006), repealed LR 40:

Chapter 4. Uniform Provisions

§401. Statement of Contractual Agreement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:894 (June 2003), amended LR 32:1879 (October 2006), repealed LR 40:

§403. Properly Submitted Claim

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:894 (June 2003), amended LR 32:1879 (October 2006), repealed LR 40:

§405. When Claims Must Be Filed

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003), amended LR 32:1879 (October 2006), repealed LR 40:

§407. Right to Receive and Release Information

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003), amended LR 32:1879 (October 2006), repealed LR 40:

§409. Legal Limitations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003), amended LR 32:1879 (October 2006), repealed LR 40:

§411. Benefit Payment to other Group Health Plans

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003), repealed LR 40:

§413. Recovery of Overpayments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003), amended LR 32:1879 (October 2006), repealed LR 40:

§415. Subrogation and Reimbursement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:895 (June 2003), amended LR 32:1880 (October 2006), repealed LR 40:

§417. Employer Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003), amended LR 32:1880 (October 2006), repealed LR 40:

§419. Program Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003), amended LR 32:1880 (October 2006), repealed LR 40:

§421. Reinstatement to Position following Civil Service Appeal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003), repealed LR 40:

§423. Amendments to or Termination of the Plan and/or Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003), amended LR 32:1880 (October 2006), repealed LR 40:

Chapter 5. Claims Review and Appeal

§501. Administrative Review

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:896 (June 2003), repealed LR 40:

§503. Appeals from Medical Necessity Determinations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:897 (June 2003), repealed LR 40:

Chapter 6. Definitions

§601. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(1)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:898 (June 2003), amended LR 32:1880 (October 2006), repealed LR 40:

Chapter 7. Schedule of Benefits—MCO

§701. Comprehensive Medical Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:901 (June 2003), amended LR 30:435 (March 2004), LR 33:645 (April 2007), LR 33:1123 (June 2007), repealed LR 40:

§703. Mental Health and Substance Abuse

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801(C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:902 (June 2003), repealed LR 40:

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 Rule may have no net impact on family functioning, stability and autonomy as described in R.S. 49:972. However, if a member is a low utilizer of benefits, they may see a reduction in the amount of premiums paid, if they move from an existing plan with high premiums to a new plan with lower premiums. Conversely, if a member is a high utilizer of benefits, they may see an increase in out of pocket costs if they move from an existing plan without a deductible (or low deductible) to a new plan with a deductible (or higher deductible), which may have an impact on the family budget pursuant to R.S. 49:972(B)(4).

Poverty Impact Statement

Because the impact of the proposed action is based on the plan selected by each individual enrollee, the impact is indeterminable as to:

1. household income, assets, and financial security;
2. early childhood or educational development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

However, if a member is a low utilizer of benefits, they may see a reduction in the amount of premiums paid, if they move from an existing plan with high premiums to a new plan with lower premiums. Conversely, if a member is a high utilizer of benefits, they may see an increase in out of pocket costs if they move from an existing plan without a deductible (or low deductible) to a new plan with a deductible (or higher deductible), which may have an impact on the financial security pursuant to R.S. 49:973(B)(1).

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.

Provider Impact Statement

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

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

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., November 14, 2014, to Susan T. West, Chief Executive Officer, Office of Group Benefits, P. O. Box 44036, Baton Rouge, LA 70804.**.**

Public Hearing

A public hearing on this proposed Rule may be scheduled for November 25, 2014, at 10 a.m. in the Louisiana Purchase Room, located on the first floor of the Claiborne Building, located at 1201 N. Third Street, Baton Rouge LA 70802, if requested.

Susan T. West
Chief Executive Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Employee Benefits

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

The proposed administrative rule changes are anticipated to result in aggregate net overall state expenditure savings in the amount of $108.1 M in FY 15 due to various health plan design changes and prescription drug benefit changes.

The Office of Group (OGB) is anticipating approximately $3.7 M in additional annual enrollment expenditures incurred due to health plan redesign including paid overtime, mailing and postage costs for post cards and enrollment guides, temporary employees to assist in annual enrollment data entry, call center contractor, website development and enrollment guide design contractor and contracted plan management and redesign consulting services.

OGB is anticipating expenditure savings in the amount of $71.7 M due to the following: $1 M – standardization of prior authorization schedule, $1.7 M – standardization of health benefits limits, $69 M M – prescription drug benefit changes including drug formulary design, 90 day fill option, clinical utilization management, high cost compound management, over utilization management, Acetaminophen management, polypharmacy management and excluding medical foods. These saving calculations are projected from August 1, 2014 to June 30, 2015. Even though the proposed rule changes provide for these provisions to be effective March 1, 2015, August 1, 2014 is the date that these benefit changes were actually implemented, which has resulted in FY 15 expenditure savings to the Office of Group Benefits.

In addition, OGB anticipates expenditures savings of 40.1 M in claims due to health plan design changes. The specific savings are attributable as follows: $29.8 M – health plan redesign, which includes increasing co-payments, increasing deductibles and the out-of-pocket maximums as well as offering additional consumer driven health plan options, $3.5 M – removal of vision coverage, $0.3 M – removal of standard excluded benefits, which includes acupuncture, prior authorizations for massages, impacted teeth and TMJ, $6.4 M – Medicare retiree migration to One Exchange (Medicare Advantage Plan marketplace). These savings calculations are anticipated from March 1, 2014 to June 30, 2015. ***Note:*** *Changing the benefit option start date from January 1, 2015 to March 1, 2015 reduced anticipated savings a total of approximately $20 M.*

The anticipated cost increases of $3.7 M and anticipated cost decreases in the amount of $111.8 M equate to a total net expenditure decrease of $108.1 M as a result of the proposed administrative rule changes.

Local participating school boards and political subdivisions would only experience a direct expenditure decrease if OGB current plan members enroll in the lower premium health plan options (Pelican HSA 775, Pelican HRA 1000), which would reduce the employer share of premium.

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

The specific revenue impact to OGB as a result of the proposed rule change depends upon the OGB members' health plan choice and the premium charges related to that health plan choice. When comparing current premium rates of the current health plans to the proposed health plans, OGB member premiums could decrease by up to 62% (current PPO member choosing the Pelican HSA 775 option) or increase by up to 29% (current CDHSA member choosing the Magnolia Open Access option). This varied range will impact OGB revenue collections. According to OGB, revenue losses of approximately $3.4 M are anticipated to be realized from March 1, 2015 through June 30, 2015, due to the loss of premiums associated with the assumed net migration of PPO and HMO members to the Pelican HRA 1000 and HSA 775 plans.

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

The cost or economic benefits to directly affected persons or non-governmental groups cannot be specifically determined, as each member's use of services and experience is different. If

a member is a low utilizer of benefits, they may see a reduction in the amount of premiums paid, if they move from an existing plan with high premiums to a new plan with lower premiums. Conversely, if a member is a high utilizer of benefits, they may see an increase in out of pocket costs if they move from an existing plan without a deductible (or low deductible) to a new plan with a deductible (or higher deductible).

OGB is anticipating the PPO plan members' economic benefit to be $181,409 in reduced annual premium costs to be realized from March 1, 2015 through June 30, 2015, due to the assumed net migration of 622 active PPO plan members to the Pelican HRA 1000 plan and 156 active PPO plan members to the Pelican HSA 775 plan, as these plans have lower premium costs.

OGB is anticipating the HMO plan members' economic benefit to be $667,293 in reduced annual premium costs to be realized from March 1, 2015 through June 30, 2015, due to the assumed net migration of 2,666 active HMO plan members to the Pelican HRA 1000 plan and 666 active HMO plan members to the Pelican HSA 775 plan, as these plans have lower premium costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition and employment is unknown. The proposed rule changes a significant component of the compensation package of state and certain local public sector employment. Individuals consider compensation packages across alternative private and public sector employment opportunities and for some these changes make the total compensation package less attractive. The proposed rule changes may influence the decisions to seek and accept employment in both the public and private sectors.

Susan T. West	John D.Carpenter
Chief Executive Officer	Legislative Fiscal Officer
1410#084	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Division of Administration
Office of Technology Services

Office of Technology Services Consolidation
(LAC 4:XV.101, 301, 303, 501, 503, and 701)

The Office of Technology Services, Division of Administration announces its intent to repeal LAC, Title 4 Part XV Information Technology, Chapter 3, Section 303; and to amend Chapter 1, Section 101; Chapter 3, Section 301; Chapter 5, Sections 501 and 503; and Chapter 7, Section 701. The Office of Technology Services is also submitting the Fiscal and Economic Impact Statement supporting the repeal and the amendments.

Act 712 of the 2014 Regular Legislative Session created a consolidated Office of Technology Services (OTS) headed by the state chief information officer and granted the new Office sole authority in establishing, defining, and coordinating all IT systems and services affecting the management and operations of the in-scope executive cabinet agencies of state government. The transfer of functions, positions, assets, and funds between and within departments to form OTS and its ancillary responsibilities to charge user agencies for all or part of the cost of its operation have also been authorized. In addition, OTS will have the sole responsibility for the procurement of IT systems and services for in-scope agencies. Act 712 became effective July 1, 2014.

The fiscal impact in FY 2015 of the IT consolidation is projected to be a net savings in state general Fund of $24,700,000. Savings will be realized through leveraging economies of scale in consolidated procurements, improved resource utilization, maximizing shared services, and efficiency gains in provision of IT support services.

Title 4
ADMINISTRATION
Part XV. Information Technology
Chapter 1. General Provisions
§101. General

A. Under the authority of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 39:15.1-6 in Act 712 of the 2014 Regular Session, the position of the state chief information officer (CIO) and the Office of Technology Services were established to manage and direct the following information technology initiatives:

1. establishing and coordinating all information technology systems and information technology services affecting the management and operations of the executive branch of state government;

2. overseeing and implementing a state master information technology plan on an annual basis;

3. establishing and directing the implementation of information technology standards, architecture, and guidelines;

4. reviewing, coordinating, and standardizing information technology;

5. implementing strategic information technology planning;

6. assessing the performance of information technology systems and technology operations and personnel;

7. assuring compatibility and connectivity of Louisiana's information systems; overseeing and coordinating the centralization of the technology systems and data processing systems;

8. overseeing all telecommunication systems;

9. assuring compatibility and connectivity of Louisiana's information systems;

10. facilitating and fostering innovative applications of emerging technologies;

11. reviewing and overseeing information technology projects and systems for compliance with statewide strategies, policies, and standards;

12. providing support and technical assistance to the office of state purchasing, the office of contractual review, the office of facility planning and control, and the office of planning and budget;

13. overseeing and coordinating access to state information that is electronically available online from agency websites;

14. facilitating a process among state agencies to identify services that are favorable for electronic delivery;

15. providing direction to the Louisiana Geographic Information Systems Council and the Louisiana Geographic Information Center (LAGIC) for coordination of geographic data, geographic technology, and geographic standards of the state;

16. identifying information technology applications that should be statewide in scope;

17. reviewing and approving the receipt by executive agencies of information technology goods and services and telecommunication systems and services from non-appropriated sources, including but not limited to grants, donations, and gifts;

18. preparing annual reports and plans concerning the status and result of the state's specific information technology plans;

19. facilitating and fostering the identification of the policy and planning data needs of the state;

20. charging respective user agencies for the cost of information technology systems and information technology services provided by the office of technology services and may include all or part of the cost of the operation of the office;

21. acting as the sole centralized customer for the acquisition, billing, and record keeping of information technology systems or information technology services provided to state agencies;

22. developing coordinated information technology systems or information technology services within and among all state agencies and require, where appropriate, cooperative utilization of information technology; and

23. reviewing, coordinating, approving, or disapproving requests by state agencies for the procurement of information technology systems or information technology services including information technology proposals, studies, and contracts.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1954 (September 2002), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:

Chapter 3. State Agencies Responsibilities

§301. General

A. All agencies under the authority of Act 712 must comply with the policies and guidelines promulgated by the Office of Technology Services.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:

§303. Information Technology Coordination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002), repealed by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:

Chapter 5. Policy and Guidelines

§501. General

A. It is the intent of the Office of Technology Services to develop formal IT policies, standards and guidelines relative to information technology activities including but not limited to the following:

1. implementing IT standards for hardware, software, and consolidation of services;

2. directing and managing IT planning, procurement, and budgeting;

3. directing and managing centralization/consolidation of technology systems and services and provision of shared IT resources;

4. assuring compatibility and connectivity of Louisiana's information systems;

5. directing and managing IT projects and systems for compliance with statewide strategies, goals, and standards.

B. The policies, standards and guidelines of the Office of Technology Services will be promulgated via the OTS website at http://doa.louisiana.gov/.

AUTHORITY NOTE: Promulgated in accordance with Act 772 of the 2001 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:

§503. Policy Distribution

A. The official method of publishing/distributing OTS policies, standards and guidelines will be via the OTS website at: at http://doa.louisiana.gov.

B. Other electronic delivery systems will be utilized as appropriate to notify agencies of adopted policies and guidelines.

AUTHORITY NOTE: Promulgated in accordance with Act 712 of the 2014 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 28:1583 (July 2002), repromulgated LR 28:1955 (September 2002, amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:

Chapter 7. Submitting and Receiving Electronic Bids for Public Works Contracts and for the Purchase of Materials and Supplies by Political Subdivisions

§701. General Provisions

A. Electronic bid is to be an alternative, rather than exclusive, method to a paper bid.

B. In addition to including the information required for paper bidding, when accepting bids electronically, the advertisement must:

1. specify any special condition or requirement for the submission;

2. contain the electronic address of the public entity.

C. Online service provider minimum requirements:

1. compliance with applicable law and rules:

a. Public Works contract law, R.S. 38:2212;

b. materials and supplies contract law, R.S. 38:2212.1;

c. the Louisiana Uniform Electronic Transaction Act, R.S. 9:2601-2619, particularly R.S. 9:2619(A) which provides that the commissioner of administration shall encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this state, other states, federal government, and

nongovernmental persons interacting with governmental agencies of this state [R.S. 9:2619(A)] while recognizing that, if appropriate, standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing most appropriate standard for particular application. [R.S. 9:2619(B)];

d. *Louisiana Administrative Code*, Title 4, Part XV, Chapter 7, "Implementation of Electronic Signatures in Global and National Commerce Act—P.L. 106-229";

e. security standards promulgated by the Office of Technology Services of the state's Division of Administration;

2. be accessible over the Internet via a modem or a network connection;

3. be available daily, 7 days a week, 24 hours daily, except for maintenance, and be reliable with better than 99.95 percent uptime with backup;

4. provide two-way service—publishes on the internet public works bid-related information from the political subdivision to the contracting community, and allows online, secure public works bid submission from the contracting community to the political subdivision;

5. automatically send bid receipt to bidder whenever a bid is submitted to the provider, with the receipt digitally signed by the provider and using the same technology used by the bidder to sign the bid;

6. have accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying;

7. ensure that bid cannot be read by anyone until the public bid opening. When bid is submitted to the provider, bid must be encrypted before sending using the political subdivision's key. Encryption level must ensure security;

8. ensure that if a bidder requests that an electronic bid be withdrawn before the bid deadline, it will not be passed on, or be accessible, to the political subdivision;

9. ensure that only the last electronic bid submission from a person is kept and passed on, or made accessible, to the political subdivision;

10. ensure that bid is not passed on, or accessible, to political subdivision until the public bid opening;

11. enable electronic bid bond submission and verification with at least two participating surety agencies.

12. ensure secure digital signature;

13. uses public/private key pair technology for encrypting and digitally signing documents;

14. provide telephone support desk, at a minimum, from 8 a.m. to 7 p.m., Monday through Friday, except for legal holidays. Provides voice mail after business hours with messages being addressed the next business day. E-mail and fax support addresses are available 24 hours a day and be answered the next business day.

AUTHORITY NOTE: Promulgated in accordance with Act 831 of the 2003 Regular Session of the Louisiana Legislature and Act 203 of the 2006 Regular Session of the Louisiana Legislature.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Information Technology, LR 32:2052 (November 2006), amended by the Office of the Governor, Division of Administration, Office of Technology Services, LR 41:

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 Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

It is anticipated that the proposed action will have no significant impact on:

1. household income, assets, and financial security;
2. early childhood or educational development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Statement

It is anticipated that the proposed Rule will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Provider Impact Statement

The proposed rulemaking will have no provider impact as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments on this proposed Rule to Richard Howze, Office of Technology Services, P.O. Box 94095, Baton Rouge, LA 70804-9095. All comments must be received by close of business on November 10, 2014.

Richard Howe
State Chief Information Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Office of Technology Services Consolidation

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

The proposed rule change is anticipated to result in State General Fund savings in the amount of $24.7 M and the reduction of 32 TO vacant positions in FY 15. Pursuant to Act 712 of 2014, the proposed rule change creates the Office of Technology Services (OTS), which consolidates most statewide information technology systems, and services under the authority of OTS.

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

There will be no effect on revenue collections of state or local governmental entities as a result of the proposed rule change.

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

There will be no anticipated costs and/or economic benefit to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is not anticipated to have any direct effect on employment. However, to the extent the creation of the OTS results in economies of scale relative to technology procurements, there could be greater procurement competition for those entities seeking to provide information technology systems and services to the state.

Richard Howze
State Chief Information Officer
1410#043

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Licensing Board for Contractors

Construction Management (LAC 46:XXIX.119)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2192, which is the contractor licensing law, the Licensing Board for Contractors (LSLBC) hereby gives notice of its intent to update its rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XXIX. Contractors

Chapter 1. General Provisions

§119. Construction Management

A. Any person, company or entity who undertakes, attempts to, or submits a price or bid or offer to perform work in construction management or program management whose scope of authority and responsibility includes supervision, oversight, direction, or in any manner assuming charge of the construction services provided to an owner by a contractor or contractors in excess of $50,000 must possess a license from this board in the major classification of building construction or heavy construction or highway, street, and bridge construction or municipal and public works construction. Any licensed contractor with any of these major classifications shall be able to bid and perform any such project specified for construction and/or program management within the scope of the classification(s) they hold. If a program manager whose scope of authority and responsibilities does not include any of the above stated tasks, that program manager does not need a contractor's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 41:

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Small Business Statement

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

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no known impact on providers of services for individuals with developmental disabilities.

Public Comments

Interested persons may submit written comments on the proposed regulations to the Licensing Board for Contractors, attention Judy Dupuy, Board Administrator, 2525 Quail Drive, Baton Rouge, LA 70808, fax (225) 765-2431, or jdupuy@lslbc.louisiana.gov through November 15, 2014.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held December 2, 2014 at 9:30 a.m. at the Louisiana State Licensing Board for Contractors at 2525 Quail Drive, Baton Rouge, LA 70808.

Michael McDuff
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Construction Management

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 expenditures. Implementation of the proposed rule changes will be carried out using existing staff and funding levels. A group of rarely utilized construction management sub-classifications create a classification redundancy that can be adequately obtained through more prominent classifications already in existence. The proposed rule change removes these sub-classifications and provides for fewer classifications for a licensed contractor to maintain, while providing the clarification for those licensed contractors when bidding on jobs involving construction or program management.

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

Implementation of the proposed rule change will not impact revenue collections of state or local governmental units. The proposed rule change does not include any fee increase by the Louisiana State Licensing Board for Contractors.

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

Contractors will benefit from clarification of Board procedures and requirements, and will have to carry fewer classifications.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Judy Dupuy	Evan Brasseaux
Board Administrator	Staff Director
1410#038	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Real Estate Appraisers Board

Real Estate (LAC 46:LXVII.Chapters 103 and 104)

Under the authority of the Louisiana Real Estate Appraisers Law, R.S. 37:3397 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 Appraisers Board has initiated procedures to amend Chapters 103 and 104. In addition to minor housekeeping, the purpose of the proposed amendments is to maintain agreement with the 2015 criteria mandated by the Appraiser Qualification Board (AQB) of the Appraisal Foundation. Under the provisions of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), the AQB establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state certification.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate
Subpart 2. Appraisers

Chapter 103. License Requirements

§10301. Examination

A. Applications for licensing shall be submitted on forms prescribed by the board and shall be accompanied by the prescribed fees in R.S. 37:3407.

B. - E. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1425 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1332 (June 2005), LR 37:332 (January 2011), LR 41:

§10303. Examination

A. Repealed.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1425 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1332 (June 2005), LR 37:332 (January 2011), LR 41:

§10307. Education Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1425 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1333 (June 2005), LR 37:333 (January 2011), repealed LR 41:

§10308. Appraiser Trainees

A. - B. Repealed.

C. A certified residential or certified general real property appraiser may engage a licensed appraiser trainee to assist in the performance of real estate appraisals, provided the following criteria are met.

1. Repealed.

2. The certified residential or certified general real property appraiser shall supervise no more than three trainees at any one time, either as employees or subcontractors.

3. The certified residential or certified general real property appraiser shall be responsible for the conduct of the licensed appraiser trainees and shall supervise their work product, in accordance with the guidelines and requirements of the *2014-2015 Uniform Standards of Professional Appraisal Practice*.

a. For the purpose of this Chapter, to supervise implies that the certified residential or certified general real property appraiser will not sign or endorse an appraisal report that was not substantially produced by the licensed appraiser trainee. The term *substantial* shall mean that the licensed appraiser trainee contributed materially and in a verifiable manner to the research and/or analysis that led to the final opinion of value expressed in the appraisal report.

4. The supervising certified residential or certified general real property appraiser shall accompany the licensed appraiser trainee on inspections of the subject property until the certified residential or certified general real property appraiser feels the appraiser trainee is competent to do so.

5. Repealed.

6. The supervising certified residential or certified general real property appraiser shall sign every appraisal report prepared by a licensed appraiser trainee who acts under the supervision of the certified residential or certified general real property appraiser.

7. The supervising certified residential or certified general real property appraiser shall immediately notify the board and the licensed appraiser trainee in writing when the certified residential or certified general real property appraiser terminates the supervision of the licensed appraiser trainee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Appraisers Board, LR 31:1333 (June 2005), amended LR 37:333 (January 2011), LR 41:

§10309. Application for Experience Credit

A. Applicants for a certified residential or certified general real property appraiser license shall satisfy the education and experience requirements prior to receiving an authorization for testing.

B. - C. Repealed.

D. Experience credit shall be approved by the board in accordance with *The Real Property Appraiser Qualification Criteria*, May 2013 prescribed by the Appraiser Qualifications Board of the Appraisal Foundation (AQB). Calculation of experience hours shall be based solely on actual hours of experience.

D.1. - E. Repealed.

F. Only those real property appraisals consistent with the *2014-2015 Uniform Standards of Professional Appraisal Practice*. (USPAP) will be accepted by the board for experience credit.

G. A peer review committee appointed by the board, as prescribed in R.S. 37:3395.1, shall serve in the following capacity.

1. Committee members shall serve at the discretion of the board and may be removed at any time, with or without cause, upon written notice from the board.

2. The initial term of each committee member shall be for a period of two years, which shall automatically extend for successive two year terms, until such time that the member resigns from the committee, is replaced by a new board appointee, or is removed by the board.

3. Committee members shall be certified residential or certified general real estate appraisers that have been licensed in good standing for a minimum of five years.

4. Committee members shall have completed the supervisory appraiser course, or its equivalent, as determined by the board.

5. Committee members may decline any request for direct mentoring without prejudice.

6. Duties of the peer review committee shall not require committee meetings or reports to the board, as each member shall operate independent of the other members; however, members shall be subject to oversight by the board and shall respond accordingly to any board inquiry.

7. Committee members shall be available to licensed trainees and certified appraisers via telephone or e-mail for direct mentoring, which may include one or more of the following:

a. examination of appraisals or other work samples;

b. feedback to mentored appraiser regarding examined work samples;

c. help with appraisal methodology; and

d. answering queries on specific appraisal assignments.

8. Committee members assigned to assist investigators shall provide the following assistance, as needed:

a. specific appraisal methodology insight;

b. uniform standards of professional appraisal practice insight;

c. benefit of competency and experience in appraisal practice; and

d. any other available assistance, as requested.

9. Committee members assigned to assist investigators shall remove themselves from any investigation where there may be an actual or perceived conflict of interest.

H. An applicant that is currently licensed and in good standing in a state approved by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFEIC) shall be deemed to satisfy the experience requirements for the same level of licensure in Louisiana. The applicant shall provide appropriate documentation as required by the board.

AUTHORITY NOTE:Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1426 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1333 (June 2005), LR 37:333 (January 2011), LR 39:310 (February 2013), LR 41:

§10311. Residential Experience Points

A. A minimum of 2500 hours of appraisal experience in no fewer than 24 months is required. The maximum allowable credit that shall be applied toward the experience requirement in a 12 month period is 1250 hours.

1. When an appraisal report is signed by more than one person, credit for said assignment shall be claimed according to the number of actual hours worked by each person. For the purpose of granting credit, a person signing in the capacity of a review or supervisory appraiser is not considered as a co-signer on the report, provided that his or her role as such is clearly indicated in the report.

2. …

B. - E. Repealed.

F. - F.4 …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1426 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board of Certification, LR 29:126 (February 2003), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1334 (June 2005), LR 37:333 (January 2011), LR 41:

§10313. General Experience Points

A. A minimum of 3000 hours of appraisal experience in no fewer than 30 months is required. The maximum allowable credit that shall be applied toward the experience requirement in a 12 month period is 1000 hours.

1. When an appraisal report is signed by more than one trainee, credit for said assignment shall be claimed according to the number of actual hours worked by each person. For the purpose of granting credit, a person signing in the capacity of a review or supervisory appraiser is not considered as a co-signer on the report, provided that his or her role as such is clearly indicated in the report.

2. If the applicant for experience credit was unable to sign the report, but is mentioned in the certification as having provided significant professional assistance, a proportional amount of credit based on the number of contributors to the report can be requested. Credit will not be granted if professional assistance was not disclosed.

B. - D.15. Repealed.

E. - E.4 …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1427 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board of Certification, LR 29:126 (February 2003), amended by the Office of the Governor, Real Estate Appraisers Board, LR 31:1334 (June 2005), LR 37:333 (January 2011), LR 41:

Chapter 104. Education Providers/Course Approval

§10417. Distance Education Courses

A. Distance education courses may be used as qualifying education credit for obtaining a license or continuing education for license renewal, provided the courses and instructors are approved or certified by the Appraiser Qualifications Board of the Appraisal Foundation (AQB) or the International Distance Education Certification Center (IDECC).

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisers Board of Certification, LR 25:1427 (August 1999), amended by the Office of the Governor, Real Estate Appraisers Board, LR 41:

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 October 20, 2014 *Louisiana Register*. The proposed Rule has no known impact on family, formation, stability, or autonomy.

Poverty Impact Statement

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule has no known impact on providers of services for individuals with developmental disabilities.

Public Comments

Interested parties may submit written comments on the proposed regulations to Stephanie Boudreaux, Louisiana Real Estate Commission, P.O. Box 14785, Baton Rouge, LA 70898-4785 or 9071 Interline Avenue, Baton Rouge, LA 70809 or sboudreaux@lrec.state.la.us, through November 9, 2014, at 4:30 p.m.

Public Hearing

If it becomes necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedure Act, a hearing will be held on Monday, November 24, 2014, at 9 a.m. at the office of the Louisiana Real Estate Appraisers Board, 9071 Interline Avenue, Baton Rouge, LA 70809.

Bruce Unangst
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Real Estate

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

There are no estimated costs (savings) to state or local governmental units. In addition to minor housekeeping matters, the purpose of the proposed rule change is to maintain agreement with the 2015 criteria mandated by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Under the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), the AQB establishes the minimum education, experience and examination requirements for real property appraisers to obtain a state certification.

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

The increased education criteria mandated by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, which will require a bachelor's degree for Certified Residential Appraisers, could serve to reduce the number of applicants for a real property appraiser license; however, there is no way in which to project an estimate of such 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)

Increases in education criteria for Certified Residential appraisers will increase costs directly to persons seeking to become real property appraisers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

All applicants and licensees must adhere to the mandates issued by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation and the resulting rules and regulations of the Real Estate Appraisers Board. Required increases in education criteria from the AQB may result in fewer individuals applying to become appraisers and entering the field, which could impact the competition and employment of this industry.

Bruce Unangst	Evan Brasseaux
Executive Director	Staff Director
1410#044	Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor
Public Defender Board

Performance Standards for Criminal Defense Representation in Indigent Capital Cases (LAC 22:XV.Chapter 19)

The Public Defender Board, a state agency within the Office of the Governor, proposes to adopt LAC 22:XV.Chapter 19, as authorized by R.S. 15:148. These proposed rules are promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of these rules is to establish policies and procedures to ensure that public defenders, assistant public defenders, and assigned counsel perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants.

R.S. 15:148 directs the Louisiana Public Defender Board to adopt rules to create mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and create separate performance standards and guidelines for attorney performance in capital case representation, juvenile delinquency, appellate, and any other subspecialties of criminal defense practice as well as children in need of care cases determined to be feasible, practicable, and appropriate by the board. In compliance with the directives of R.S. 15:148, the Public Defender Board proposes to adopt these performance standards for attorneys representing indigent capital defendants.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part XV. Public Defender Board
Chapter 19. Performance Standards for Criminal Defense Representation in Indigent Capital Cases

§1901. Purpose, Findings and Intentions

A. The standards for attorneys representing indigent defendants in capital cases are intended to serve several

purposes. First and foremost, the standards are intended to encourage public defenders, assistant public defenders, and assigned counsel to perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants. These standards apply to trial level, appellate, and post-conviction representation. It is the intention of these rules to adopt and apply the standards for capital defense set out by the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated commentary, and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*.

B. The standards are also intended to alert defense counsel to courses of action that are necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions that should be taken in each case to ensure that the capital client receives high quality legal representation. The standards are further intended to provide a measure by which the performance of individual attorneys and defender offices may be evaluated by case supervisors, responsible agencies and the state public defender and to assist in training and supervising attorneys. While the great majority of the requirements detailed in these standards reflect accepted minimum levels of practice in capital defense, some standards have been added to assist in the supervision, development and accountability of indigent capital defense service provision.

C. The language of these standards is general, implying flexibility of action which is appropriate to the situation. Use of judgment in deciding upon a particular course of action is reflected by the phrases "should consider" and "where appropriate". In those instances where a particular action is required in providing quality representation, the standards use the words "should" or "shall". Even where the standards use the words "should" or "shall", in certain situations the lawyers best informed professional judgment and discretion may indicate otherwise.

D. There is a limitless variety of circumstances presented by indigent capital defense and this variation in combination with changes in law and procedure requires that attorneys approach each new case with a fresh outlook. Therefore, though the standards are intended to be comprehensive, they are not exhaustive. Depending upon the type of case and the particular jurisdiction, there may well be additional actions that an attorney should take or should consider taking in order to provide zealous and effective representation. Attorneys are expected to use their individual professional judgment in representing clients. If that judgment mandates a departure from these standards, the attorney should be aware of and be able to articulate the reasons that a departure from the standards is in the client's best interests and consistent with high quality legal representation.

E. Minimum standards that have been promulgated concerning representation of defendants in non-capital cases, and the level of adherence to such standards required for non-capital cases are not sufficient for death penalty cases. Counsel in death penalty cases are required to perform at the level of an attorney reasonably skilled in the specialized practice of capital representation, zealously committed to the capital case, who has adequate time and resources for preparation. These performance standards have been adapted from the *State of Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court*, adding capital specific issues and procedures where necessary. In light of the recognition that "death is different" and capital prosecutions necessitate heightened procedural safeguards, these standards should be interpreted in order to compel high quality legal representation.

F. In accordance with R.S. 15:173 the exercise of the authority to promulgate standards is not intended to create any new right, right of action, or cause of action or eliminate any right, right of action, or cause of action existing under current law. Accordingly, these standards shall not be construed to provide any criminal defendant the basis of any claim that the attorney or attorneys appointed to represent him pursuant to the Louisiana Public Defender Act of 2007 performed in an ineffective manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1903. General Standards for Capital Defense Counsel

A. Obligations of Defense Counsel

1. Since the death penalty differs from all other criminal penalties, defense counsel in a capital case should respond to this difference by making extraordinary efforts on behalf of the accused.

2. The minimum standard in a capital case is high quality representation. To provide high quality representation counsel should zealously preserve, protect, and promote the client's rights and interests, and be loyal to the client. Counsel should serve as the client's counselor and advocate with courage and devotion, free from conflicts of interest and political or judicial interference. Zealous, high quality representation is to be provided in accordance with the *Louisiana Rules of Professional Conduct*.

3. To ensure the preservation, protection and promotion of the client's right and interests, counsel should:

a. be proficient in the applicable substantive and procedural law;

b. acquire and maintain appropriate experience, skills and training;

c. devote adequate time and resources to the case;

d. engage in the preparation necessary for high quality representation;

e. endeavor to establish and maintain a relationship of trust and open communication with the client;

f. make accommodations where necessary due to a client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, cultural differences, and circumstances of incarceration.

4. The primary and most fundamental obligation of a capital defense attorney to the administration of justice and as an officer of the court is to provide zealous, effective, high quality, ethical representation for his or her clients at all stages of the criminal process.

5. If personal matters make it impossible for defense counsel to fulfill the duty of zealous, high quality representation, he or she has a duty to refrain from representing the client.

6. Where counsel is unable to provide high quality representation in a particular case, counsel must promptly bring this deficiency to the attention of the capital case

supervisor and the capital case coordinator or Responsible Agency. If the deficiency cannot be remedied, then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

7. Counsel assigned in any case in which the death penalty is a possible punishment should, even if the prosecutor has not indicated that the death penalty will be sought, begin preparation for the case as one in which the death penalty will be sought while employing strategies to have the case designated as a non-capital one. Even if the case has not been filed as a capital case, if there exists a reasonable possibility to believe that the case could be amended to a capital charge, counsel should be guided by capital defense techniques and these standards. In considering whether there is any reason to believe that the case could be amended, counsel should have regard to the nature of the allegations, the practice of the local prosecuting agency, statements by law enforcement and prosecutors, media and public sentiment, and any political factors that may impact the charging decision.

B. Training and Experience of Capital Defense Counsel

1. In order to provide high quality legal representation, counsel should have a mastery of any substantive criminal law and laws of criminal procedure that may be relevant to counsel's representation. Counsel should also be familiar with the prevailing customs or practices of the relevant court, and the policies and practices of the prosecuting agency.

2. In providing representation at any stage in a capital case, counsel should be familiar with all applicable areas of law relevant to capital trials, appeals, and state and federal post-conviction relief.

3. Prior to agreeing to undertake representation in a capital case, counsel should have sufficient experience or training to provide high quality representation. Counsel should not accept a capital case assignment unless he or she has been certified for the specific level of representation assigned, and has the necessary knowledge and skills to handle the particular case.

4. If after being assigned a case counsel finds that the case involves particular issues or procedures in which counsel does not have the experience or training necessary to provide high quality legal representation, counsel should acquire the necessary knowledge or skills or request resources for another attorney to provide such services.

5. In providing high quality representation, counsel should consult with and take advantage of the skills and experience of other members of the criminal defense community and certified capital defenders, in particular. Further, where considerations of timing, resources or the interests of the client make it appropriate, counsel should request assignment of an additional attorney(s). Similarly, where appropriate, counsel should request assignment of an additional attorney(s) with specialized experience or knowledge to assist directly in particular aspects of the representation.

6. Capital defense counsel should complete a comprehensive training program in the defense of capital cases as required by the capital guidelines. Counsel should, on an ongoing basis, attend and successfully complete specialized training programs in the defense of capital cases. In addition to specific training, counsel should stay abreast of changes and developments in the law and other matters relevant to the defense of capital cases.

7. As a component of acquiring and maintaining adequate training, counsel should consult with other attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information about practices of judges, prosecutors, and other court personnel. More experienced counsel should offer to mentor less experienced attorneys.

C. Resources and Caseload

1. Counsel should not accept a capital case assignment unless he or she has available sufficient resources to offer high quality legal representation to the client in the particular matter, including adequate funding, investigative services, mitigation services, support staff, office space, equipment, and research tools.

2. If after being assigned a case counsel discovers that he or she does not have available sufficient resources, then counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should seek necessary resources from all available sources, including litigating for those resources or for appropriate relief should the resources not be made available. Counsel should document in the file the resources he or she believes are needed and any attempts to obtain those resources. Counsel should create an adequate record in court to allow a full review of the denial of necessary resources or the failure to provide appropriate relief.

3. Counsel should maintain compliance with all applicable caseload and workload standards. When counsel's workload is such that counsel is unable to provide each client with high quality legal representation in accordance with the capital guidelines and these performance standards, counsel shall inform the case supervisor. If counsel believes the case supervisor has inadequately resolved the issue, counsel should raise the question progressively with the district and the state public defender, as appropriate. Where counsel has exhausted all avenues for reasonable resolution and the excessive workload issue has not been resolved counsel should, after providing the state public defender with reasonable notice, move to withdraw from the case or cases in which capital defense services in compliance with the guidelines and these performance standards cannot be provided.

4. Counsel should never give preference to retained clients over indigent clients, or suggest that retained clients should or would receive preference.

5. Counsel representing capital clients should, due to the nature of capital cases and the necessity for time-consuming research and preparation, give priority to death penalty cases over their other caseload.

D. Professionalism

1. Counsel has an obligation to keep and maintain a thorough, organized, and current file relating to the representation of each client. Counsel's file relating to a representation includes both paper and electronic documents as well as physical objects, electronic data and audio-visual materials. Counsel's file should be maintained in a fashion

that will allow counsel to provide high quality representation to the client and allow successor counsel to clearly and accurately identify the work performed, the tactical decisions made, the materials obtained, the source from which materials and information were obtained, and the work product generated in the representation. Counsel should clearly document work performed, including analysis of file materials, in such a way that other team members and successor counsel may take advantage of the work performed and avoid unnecessary duplication of effort.

2. Counsel should act with reasonable diligence and promptness in representing the client. Counsel should be prompt for all court appearances and appointments and, in the submission of all motions, briefs, and other papers. Counsel should ensure that all court filings are proofread and edited to protect the client's rights from being forfeited due to error. Counsel should be present, alert, and focused on the client's best interests during all critical stages of the proceedings.

3. Counsel's obligation to provide high quality representation to the client continues until counsel formally withdraws, or an order relieving counsel becomes final. Unless required to do so by law or the rules of professional conduct, counsel should not withdraw from a case until successor counsel has enrolled. Counsel who withdraws or is relieved should take all steps necessary to ensure that the client's rights and interests are adequately protected during any transfer of responsibility in the case. Such steps should include ensuring compliance with any filing or other deadlines in the case, and ensuring the collection or preservation of any evidence that may cease to be available if investigation were delayed.

4. All persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client, and should cooperate fully with successor counsel. This duty includes, but is not limited to:

a. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the representation and any litigation;

b. promptly providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

c. sharing potential further areas of investigation and litigation with successor counsel; and

d. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

5. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should take all steps necessary to ensure the client's rights and interests are fully protected during any transfer or reallocation of responsibility in the case. Counsel should seek to interview all persons who are or have been members of the defense team with an aim to:

a. promptly obtaining the client's files or a copy of the files, as well as information regarding all aspects of the representation;

b. discovering potential further areas of investigation and litigation; and

c. facilitating cooperation from current and former defense team members in order to coordinate professionally appropriate legal strategies.

6. Current and former counsel should maintain the confidences of the client and assert all available privileges to protect the confidentiality of work product and communications with the client. Where disclosure of privileged or confidential information is strictly necessary in carrying out the representation, such disclosures should be limited to those necessary to advance the interests of the client and should be made in circumstances that limit the extent of any waiver of privilege or confidentiality.

7. Where appropriate counsel may share information with counsel for a co-defendant, and work together with counsel for a co-defendant on investigatory, preparatory and/or strategic matters, but counsel's decisions should always reflect the needs of counsel's client with special consideration for client confidentiality. Counsel should never abdicate the client's defense to a co-defendant's counsel. Counsel should maintain full control of all decisions affecting the client. Counsel should consider whether it is appropriate to enter a formal joint defense agreement with one or more co-defendants.

8. Counsel and defense team members should provide full and honest cooperation with successor counsel undertaking the investigation and preparation of a claim of ineffective assistance of counsel. In providing honest cooperation, counsel should be alert to and avoid any improper influence arising from a desire to assist the client or to protect him or herself.

9. Where counsel is the subject of a claim of ineffective assistance of counsel, he or she should not disclose any confidential or privileged information without the client's consent, unless and until a court formally determines that privilege has been waived and then only to the extent of any such waiver. The disclosure of confidential or privileged information in such circumstances should be limited to those matters necessary to respond to specific allegations by the client concerning the lawyer's representation of the client. Nothing in this Standard shall diminish the responsibility of counsel to cooperate fully with the client and successor counsel, nor limit the ability of counsel to communicate confidential or privileged information to the client or his legal representativeness within the protection of the lawyer-client relationship.

10. While ensuring compliance with the *Louisiana Rules of Professional Conduct* in relation to extrajudicial statements, counsel should consider the potential benefits and harm of any publicity in deciding whether or not to make a public statement and the content of any such statement. When making written or oral statements in judicial proceedings, counsel should consider the potential benefits and harm likely to arise from the public dissemination of those statements. In responding to adverse publicity, counsel should consider the interests of the client and whether a statement is required to protect the client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

11. At each stage and subject to the circumstances of each case, counsel should be mindful of the desirability of treating any victim or other person affected by the crime alleged against the client with respect, dignity, and compassion. Counsel should avoid disparaging the victim directly or indirectly, unless necessary and appropriate in the circumstances of the particular case. Counsel should

undertake victim outreach through an appropriately qualified team member, or the use of an expert in defense initiated victim outreach.

E. Conflicts of Interest

1. Counsel should be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Conflicts of interest experienced by one counsel are relevant to all counsel: the existence of a conflict free lawyer on the defense team does not ameliorate the potential harm caused by a conflict affecting another lawyer on the team. Counsel should have a procedure for identifying conflicts when receiving new assignments and reviewing existing cases for conflicts where there is a relevant change in circumstances. At a minimum, counsel should maintain a conflict index containing the names of current and former clients which should be checked against the name of the client and, where known, the name of the victim(s), the name of any co-defendant(s), and the names of any important witnesses.

2. Where a capital case involves multiple defendants, a conflict will be presumed between the defendants and separate representation will be required. However, there are many other situations in which conflicts can arise. In addition to the current or prior representation of co-defendants or witnesses, conflicts can arise, for example, when a capital defense lawyer: is subject to investigation or criminal prosecution by state or federal authorities; is representing or has represented a witness or victim; is seeking employment with prosecuting agencies; has a financial, political or personal interest in the proceedings; has an excessive workload; or, is related to a victim or the judge. Disclosure of potential conflicts should be made under any of these circumstances and counsel should err in favor of disclosure of any other potential conflicts.

3. Conflicts of interest should be promptly resolved in a manner that advances the interests of the client and complies with the *Louisiana Rules of Professional Conduct*.

4. If a conflict develops during the course of representation, counsel has a duty to notify the client and, where required, the court in accordance with the rules of the court and the *Louisiana Rules of Professional Conduct*. Defense counsel should fully disclose to the client, at the earliest feasible opportunity, any interest in or connection with the case or any other matter that might be relevant to counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

5. Where the client files a motion, complaint, or grievance against counsel in regard to the quality of his or her representation, counsel should notify the Case Supervisor and the agency responsible for the assignment of counsel to the case.

6. Any waiver of conflict that is obtained should comply with the requirements of the *Louisiana Rules of Professional Conduct*, and should be obtained only after the client has been told: that a conflict of interest exists; the consequences to his defense from continuing with conflict-laden counsel; and that he has a right to obtain other counsel. In a capital case, any waiver of conflict should be obtained through and after consultation by the client with independent counsel. In order to allow the monitoring of the procedure of obtaining of a waiver, the capital case coordinator should be advised prior to obtaining a conflict waiver from an indigent capital defendant and should approve or provide for the assignment of independent counsel.

F. Allocation of Authority between Counsel and Client

1. The allocation of authority between counsel and the client shall be managed in accordance with *Louisiana's Rules of Professional Conduct*, having particular regard to rules 1.2, 1.4, 1.14 and 1.16.

2. Counsel serves as the representative of the client and shall abide by the client's decisions regarding the objectives of the representation. However, counsel shall provide the client with his or her professional opinions with regard to the objectives of the representation. In counseling the client, counsel shall refer not only to the law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make informed decisions. Counsel shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and may take such action as is impliedly authorized by the representation.

3. The attorney shall explain to the client those decisions that ultimately rest with the client and the advantages and disadvantages inherent in these choices. Counsel shall abide by the client's decision, made after meaningful consultation with counsel, as to a plea to be entered, whether to waive jury trial, whether the client will testify, and whether to appeal. However, counsel shall not abide by such a decision where the client is incompetent, including where the client is, in the circumstances, incapable of making a rational choice not substantially affected by mental disease, disorder or defect. In such circumstances, counsel should take the steps described in these standards relating to the representation of persons with diminished capacity and the raising of the client's incompetence.

4. Strategic and tactical decisions should be made by counsel after consultation with the client where feasible and appropriate. When feasible and appropriate, counsel and other team members should seek the client's input regarding decisions to be made in the case. Counsel should candidly advise the client regarding the probable success and consequences of adopting any particular posture in the proceedings, and provide the client with all information necessary to make informed decisions. Counsel should provide the client with his or her professional opinion on what course to adopt whenever possible. In order to ensure that consultation with the client is meaningful, counsel should make accommodations where necessary due to a client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, cultural differences, and circumstances of incarceration.

5. While counsel is ordinarily responsible for determining the means by which the objectives of representation are to be accomplished, where the client revokes counsel's express or implied authority to take a particular course of action, counsel may not act as the agent of the client without that authority. This will not prevent counsel from taking professionally responsible steps required by these Standards but counsel must not purport to be speaking on behalf of or otherwise acting as the agent of the client.

6. Counsel shall not take action he or she knows is inconsistent with the client's objectives of the representation. Counsel may not concede the client's guilt of the offense charged or a lesser included offense without first obtaining the consent of the client.

7. Where counsel and the client disagree as to the means by which the objectives of the representation are to be achieved counsel should consult with the client and seek a mutually agreeable resolution of the dispute. Counsel should consult with the case supervisor and utilize other defense team members in his or her efforts to resolve a dispute.

8. Where the client seeks to discharge counsel, every reasonable effort should be made to address the client's grievance with counsel and avoid discharge. Counsel should caution the client as to the possible negative consequences of discharging or attempting to discharge counsel and the likely result if any such attempt. Should the client persist with his desire to discharge counsel, the case supervisor and responsible agency should be immediately informed and counsel may request a substitution of counsel by the responsible agency. Counsel must move to withdraw when actually discharged by the client.

9. Where the client insists upon taking action with which the counsel has a fundamental disagreement or the representation has been rendered unreasonably difficult by the client, counsel shall advise the case supervisor and may request a substitution of counsel by the responsible agency. Where a substitution of counsel is not permitted, counsel may move to withdraw from the representation only with the prior consent of the responsible agency.

10. Any withdrawal of counsel, including a substitution of counsel, should occur with the leave of the court. Should the court refuse counsel leave to withdraw, then counsel should continue to represent the defendant.

11. Where counsel or a client make a reasonable request for substitution of counsel, the district defender or state public defender, as appropriate, shall take all reasonable steps to substitute counsel. Where substitution of counsel is not possible, every effort should be made to avoid the withdrawal or discharge of counsel, including the assignment of additional counsel, consultation with persons experienced in resolving such disputes and providing counsel access to expert advice and training designed to assist in resolving the dispute.

12. A client's capacity to make adequately considered decisions in connection with the representation may be diminished, whether because of mental impairment or for some other reason. Where counsel reasonably believes that the client has diminished capacity, he or she should:

a. as far as reasonably possible, maintain a normal client-lawyer relationship with the client;

b. if the client is at risk of substantial harm unless action is taken and the client cannot adequately act in his own interests, take reasonably necessary protective action. Such action may include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In appropriate cases, counsel may seek the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests;

c. in taking any protective action, be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

13. If counsel believes that the client will now or in the future seek to abandon some or all of the mitigation case or waive appellate or post-conviction review, counsel should notify the case supervisor and appropriate action should be taken to respond to this situation. Given the gravity and complexity of this situation, counsel and the case supervisor should consider consultation with additional counsel experienced and skilled in this area.

14. The client has a right to view or be provided with copies of documents in counsel's file. Acknowledging the dangers of case related materials being held in custodial facilities, counsel should strongly advise the client against maintaining possession of any case related material. Counsel should provide alternatives to satisfy the client's requests, such as more frequent visits with team members to review relevant documents in a confidential setting, or transferring file to successor counsel. Upon the termination of the representation, the client will ordinarily be entitled to counsel's entire file upon request.

G. Assembling the Defense Team

1. Counsel are to be assigned in accordance with the Capital Defense Guidelines. Where possible, lead counsel should participate in the decision of who should be assigned as additional counsel. Lead counsel should advocate for the assignment of additional counsel with the skills, experience and resources appropriate to the provision of high quality representation in the case. Lead counsel should have regard to his or her own strengths and weaknesses in recommending the assignment of additional counsel in order to ensure the formation of a defense team capable of providing high quality representation to the client in the particular case.

2. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these Performance Standards and the associated Guidelines. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these Standards, unless the Standard specifically imposes the duty on "lead counsel."

3. As soon as practical after assignment and at all stages of a capital case, the director of the law office assigned the case, the contracting agency or lead counsel should assemble a defense team by:

a. providing advice regarding the number and identity of the additional counsel to be assigned;

b. selecting and making any appropriate staffing, employment or contractual agreements with non-attorney team members in such a way that the defense team includes:

i. at least one mitigation specialist and one fact investigator;

ii. at least one member with specialized training in identifying, documenting and interpreting symptoms of

mental and behavioral impairment, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

iii. individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's history;

iv. sufficient support staff, such as secretarial, law clerk and paralegal support, to ensure that counsel is able to manage the administrative, file management, file review, legal research, court filing, copying, witness management, transportation and other practical tasks necessary to provide high quality representation; and

v. any other members needed to provide high quality legal representation, including people necessary to: reflect the seriousness, complexity or amount of work in a particular case; meet legal or factual issues involving specialist knowledge or experience; ensure that the team has the necessary skills, experience and capacity available to provide for the professional development of defense personnel through training and case experience; or, for other reasons arising in the circumstances of a particular case.

4. In selecting team members, lead counsel should have specific regard to the overall caseload of each team member (whether indigent, pro bono or privately funded) and should monitor the caseloads of all team members throughout the representation. Counsel should have regard to the benefits of a racially and culturally diverse team.

5. Where staff assignments to a team are made by the director of a law office or the contracting agency, rather than lead counsel, lead counsel remains responsible for ensuring that the staffing assignments and the defense team are in compliance with the Capital Guidelines and Performance Standards and are sufficient to permit high quality representation.

6. The defense team refers to those persons directly responsible for the legal representation of the client and those persons directly responsible for the fact and mitigation investigation. While others may assist the defense team, including lay and expert witnesses, they are not a part of the defense team as that term is used in this Section. The mitigation specialist retained as a part of the defense team is not intended to serve as a testifying witness and, if such a witness is necessary, a separate expert mitigation specialist should be retained.

7. Team members should be fully instructed on the practices and procedures to be adopted by the team, including the procedure for communication and decision-making within the team and how such matters will be recorded in the client file. Team meetings should be conducted no less than once every two weeks and should, wherever possible, include the in-person attendance of all team members. Team meetings should have an agenda and a record of the matters discussed, tasks assigned and decisions made at the team meeting should be maintained in the client file. All members of the team should be encouraged to participate and contribute.

8. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should promptly take the steps necessary to ensure that the defense team receives the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make an adequate record to preserve the issue for judicial review and seek such review. It is the responsibility of counsel to be fully aware of the potential resources available to assist in the representation of the client and the rules and procedures to be followed to seek and obtain such resources.

9. While lead counsel bears ultimate responsibility for the performance of the defense team and for decisions affecting the client and the case, all additional counsel should ensure that the team and its members are providing high quality representation in accordance with these Performance Standards and associated Guidelines.

10. In general, counsel should avoid assigning one lawyer to handle the guilt-innocence phase and another lawyer to handle the penalty phase.

H. Scope of Representation

1. Counsel should represent the client in the matter assigned from the time of assignment until relieved by the assignment of successor counsel or by order of the court.

2. Ordinarily, counsel representing a capital defendant should assume responsibility for the representation of the defendant in all pending criminal and collateral proceedings involving the client for which counsel is adequately qualified and experienced. Counsel should represent the client in any new criminal proceeding arising during the course of the capital representation. Counsel should investigate and commence appellate or collateral proceedings regarding other criminal convictions of the client where the favorable resolution of such an action is likely to be of significance in the capital proceeding. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the capital proceeding.

3. Where it is not appropriate for counsel to assume the representation of the defendant in other proceedings due to a lack of appropriate experience or qualifications, lack of sufficient resources, or for other reasons, counsel should take all reasonable steps to ensure that appropriately qualified counsel is representing the client and is, where possible, capitally certified.

4. Counsel should maintain close communication with and seek the cooperation of counsel representing the client in any other proceeding to ensure that such representation does not prejudice the client in his capital proceedings and is conducted in a manner that best serves the client's interests in light of the capital proceedings.

5. Where counsel's representation of a defendant is limited in its scope, lead counsel should ensure that the limitation is reasonable in the circumstances and obtain the client's informed consent to the limited scope of the representation. In obtaining informed consent, lead counsel should explain the exact limits of the scope of the

representation, including both those purposes for which the client will and will not be represented. Where possible, the agreement to provide representation that is limited in its scope should be communicated in writing.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1905. Performance Standard 2: Relations with Client

A. Counsel's Obligation to Build and Maintain Relationship with Client

1. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust and confidence with the client, and should maintain close contact with the client. Representation of a capital client should proceed in a client-centered fashion with a strong emphasis on the relationship between the defense team and the client.

2. Counsel should make every appropriate effort to overcome barriers to communication and trust, including those arising from the client's special circumstances, such as incompetence, mental or physical disability/illness, language barriers, youth, and cultural differences, circumstances of incarceration, prior experiences in the criminal justice system, and prior experiences of legal representation. Where barriers to communication or trust with counsel cannot be adequately overcome to allow for high quality representation of the client, the capital case supervisor should be informed, and such further steps as are necessary should be taken. In an appropriate case, this may include seeking the assignment of additional counsel or other team members or the substitution of counsel.

3. Lead counsel should ensure that the defense team as a whole is able to establish and maintain a relationship of trust and confidence with the client. Where a particular team member is unable to overcome barriers to communication or trust, lead counsel should take all reasonable steps to remedy the problem. Where the relationship cannot be sufficiently improved, lead counsel should strongly consider removing or replacing the team member, or seeking removal or replacement from the director of the law office or contracting agency.

4. Understanding that a relationship of trust and confidence with the client is essential to the provision of effective representation of a capital client, the defense team must take all reasonable steps to ensure that both the representation provided and the manner in which that representation is provided operate to develop and preserve such a relationship.

5. Understanding that regular contact and meaningful communication are essential to the provision of effective representation of a capital client, the defense team should take all reasonable steps to ensure that the client is able to communicate regularly with the defense team members in confidential circumstances and should ensure that the client is visited by defense team members frequently, particularly where the client is in custody. Counsel may rely upon other members of the defense team to provide some of the required contact with the client, but visits by other team members cannot substitute for counsel's own direct contact with the client. Given lead counsel's particular responsibilities, visits by other counsel in the case cannot substitute for lead counsel's own direct contact with the client.

6. In a trial level case, a capital client should be visited by a member of the defense team no less than once every week, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to trial. In a trial level case a capital client should be visited by an attorney member of the defense team no less than once every two weeks and by lead counsel no less than once month, though visits by counsel would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during, and following trial.

7. In an appellate or post-conviction case, a capital client may be visited less frequently, but regular communication and actual visits remain critical to effective representation. In an appellate or post-conviction case, a capital client should be visited by a member of the defense team no less than once every two weeks, by an attorney member of the defense team no less than once a month and by lead counsel no less than once every two months, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during, and following any major hearing and in the lead up to any execution date.

8. In all capital cases, where barriers to communication or trust exist or the circumstances call for more frequent contact, visits by defense team members, including counsel, should be as frequent as necessary to ensure high quality representation and to protect the interests of the client.

9. Counsel at all stages of the case need to monitor the client's physical, mental, and emotional condition and consider any potential legal consequences or adverse impact upon the adequate representation of the client. Counsel should monitor the client's physical, emotional, and mental condition throughout the representation both personally, through the observations of other team members and experts, and through review of relevant records. If counsel observes changes in the client's appearance or demeanor, counsel should promptly conduct an investigation of any circumstances contributing to this change, and take all reasonable steps to advance the best interests of the client. Recognizing the potential adverse consequences for the representation inherent in any substantial impairment of the client's physical, mental and emotional condition, counsel should take all reasonable steps to improve the client's physical, mental and emotional condition where possible.

10. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

a. the progress of and prospects for the investigation and what assistance the client might provide;

b. current or potential legal issues;

c. current or potential strategic and tactical decisions, including the waiver of any rights or privileges held by the client;

d. the development of a defense theory;

e. presentation of the defense case;

f. potential agreed-upon dispositions of the case, including any possible disposition currently acceptable to the prosecution;

g. litigation deadlines and the projected schedule of case-related events; and

h. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

11. Counsel shall inform the client of the status of the case at each step and shall provide information to the client regarding the process and procedures relevant to the case, including any anticipated time frame.

12. In the absence of a specific agreement to the contrary, counsel shall provide the client with a copy of each substantive document filed or entered in the case by the court and any party. Counsel shall warn any incarcerated client of the dangers of keeping case related material in a custodial environment and take steps to ensure that the client may have reasonable access to the documents and materials in the case without the necessity of keeping the documents in the prison.

13. Upon disposition of the case or any significant issue in the case, counsel shall promptly and accurately inform the client of the disposition.

14. Counsel should treat the client with respect. Counsel should never demean, disparage, or be hostile towards the client. It is the responsibility of lead counsel to ensure that all members of the defense team satisfy this standard.

15. Counsel shall respond in a timely manner to all correspondence from a client, unless the correspondence is wholly unreasonable in its volume or interval.

16. Counsel should maintain an appropriate, professional office and should maintain a system for receiving regular collect telephone calls from incarcerated clients. Counsel should provide incarcerated clients with directions on how to contact the office via collect telephone calls (e.g. what days and/or hours calls will be accepted). Counsel should determine whether telephone communications will be confidential and where they are not, should take all reasonable steps to ensure that privileged, confidential, or potentially damaging conversations are not conducted during any monitored or recorded calls.

17. Counsel should advise the client at the outset of the representation and frequently remind the client regarding his rights to silence and to counsel.

a. Counsel should carefully explain the significance of remaining silent, and how to assert the rights to silence and counsel. Counsel should specifically advise the client to assert his rights to silence and counsel if approached by any state actor seeking to question him about the charged offense, any other offense, or any other matter relevant to guilt, penalty, or a possible claim for relief. Counsel should take all reasonable steps to assist the client in asserting these rights, including providing a written assertion of rights for the client to use and asserting these rights on behalf of the client. Counsel should have regard to any special need or vulnerability of the client likely to impact his effective assertion of his rights.

b. In particular, counsel should advise the client not to speak with police, probation officers, or other government agents about the offense, any related matters, or any matter that may prove relevant in a penalty phase hearing without the presence of counsel. The client should be advised not to speak or write to any other person, including family members, friends, or co-defendants, about any such matters. The client should also be advised not to speak to any state or court appointed expert without the opportunity for prior consultation with counsel.

c. Counsel should also be conscious of the possible interest of media organizations and individual journalists and should advise the client not to communicate with the media, except as a part of a considered strategy undertaken on the advice of counsel.

18. If counsel knows that the client will be coming into contact with a state actor in circumstances relevant to the representation, counsel should seek to accompany the client to prevent any potentially harmful statements from being made or alleged.

B. Counsel's Initial Interviews with Client

1. Recognizing that first contact with a capital client is an extremely important stage in the representation of the client, counsel should take all reasonable steps to conduct a prompt initial interview designed to protect the client's position, preserve the client's rights, and begin the development of a relationship of trust and confidence.

2. Counsel should take all reasonable steps to ensure that the client's rights are promptly asserted, that the client does not waive any right or entitlement by failing to timely assert the right or make a claim, and that any exculpatory or mitigating evidence or information that may otherwise become unavailable is identified and preserved.

3. Counsel should ensure that a high level of contact is maintained at the outset of the representation that is at least sufficient to begin to develop a relationship of trust and confidence, and to meaningfully communicate information relevant to protecting the client's position and preserving the client's rights.

4. An initial interview of pre-trial clients should be conducted within twenty-four hours of counsel's entry into the case unless exceptional circumstances require counsel to postpone this interview. In that event or where the client is being represented in appellate or post-conviction proceedings, the interview should be conducted as soon as reasonably possible.

5. If non-certified counsel is meeting with the client before the assignment of appropriately certified counsel, the information obtained should ordinarily be limited to that necessary to advise the client concerning the current procedural posture of the case and to provide for the assertion of the client's rights to silence and to counsel.

6. Preparing for the Initial Interview:

a. prior to conducting the initial interview of a pre-trial client, counsel should, where possible and without unduly delaying the initial interview:

i. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

ii. obtain copies of any relevant documents that are available, including copies of any charging documents, warrants and warrant applications, law enforcement and other investigative agency reports, autopsy reports, and any media accounts that might be available; and,

iii. consult with any predecessor counsel to become more familiar with the case and the client.

b. In addition, where the pre-trial client is incarcerated, counsel should:

i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

iii. be familiar with any procedures available for reviewing the trial judge's setting of bail.

c. prior to conducting the interview of a client at appellate and post-conviction stages, counsel should, where possible and without unduly delaying the initial interview:

i. be familiar with the procedural posture of the case;

ii. obtain copies of any relevant documents that are available that provide information on the nature of the offense and the conduct and outcome of prior stages of the proceedings;

iii. consider consulting with any predecessor counsel to become more familiar with the case and the client.

7. Conducting the Interviews

a. counsel should not expect to adequately communicate all relevant information or begin to develop the necessary relationship with the client in a single interview but should undertake an initial series of interviews designed to achieve these goals. Given the peculiar pressures and issues presented in a capital case, counsel should seek to develop a relationship of trust and confidence before questioning the client about matters relevant to the offense or mitigation.

b. counsel should always interview the client in an environment that protects the attorney-client privilege. Counsel should take reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and client in courthouses, lock-ups, jails, prisons, detention centers, hospitals, forensic mental health facilities and other places where clients confer with counsel.

c. counsel should take all reasonable steps to ensure, at the initial interview and in all successive interviews and proceedings, that barriers to communication and trust are overcome.

d. the scope and focus of the initial interviews will vary according to the circumstances of the case, the circumstances of the client, and the circumstances under which the interviews occur.

e. information to be provided to the client during initial interviews includes, but is not limited to:

i. the role of counsel and the scope of representation, an explanation of the attorney-client privilege, the importance of maintaining contact with counsel, and instructions not to talk to anyone, including other inmates, about the facts of the case or matters relevant to the sentencing hearing without first consulting with the attorney;

ii. describing the other persons who are members of the defense team, how and when counsel or other appropriate members of the defense team can be contacted and when counsel or other members of the defense team will see the client next;

iii. a general overview of the procedural posture and likely progression of the case, an explanation of the charges, potential penalties, and available defenses;

iv. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs; e.g., medical or mental health attention, contact with family or employers;

v. realistic answers, where possible, to the client's most urgent questions;

vi. an explanation of the availability, likelihood, and procedures that will be followed in setting the conditions of pretrial release; and

vii. a detailed warning of the dangers with regard to the search of client's cell and personal belongings while in custody, and the fact that conversations with other inmates, telephone calls, mail, and visitations may be monitored by jail officials. The client should also be warned of the prevalence and danger presented by jailhouse informants making false allegations of confessions by high profile prisoners and advised of the strategies the client can employ to protect himself from such false allegations.

f. information that should be acquired as soon as appropriate from the client includes, but may not be limited to:

i. the client's immediate medical needs and any prescription medications the client is currently taking, has been prescribed or might require;

ii. whether the client has any pending proceedings, charges, or outstanding warrants in or from other jurisdictions or agencies (and the identity of any other appointed or retained counsel);

iii. the ability of the client to meet any financial conditions of release or afford an attorney;

iv. the existence of potential sources of important information which counsel might need to act immediately to obtain and/or preserve;

g. appreciating the unique pressure placed upon capital defendants and the extremely sensitive nature of the enquiries that counsel must make, counsel should exercise great caution in seeking to explore the details of either the alleged offense or matters of personal history until a relationship of trust and confidence has been established that will permit full and frank disclosure.

h. where possible, counsel should obtain from the client signed release forms necessary to obtain client's medical, psychological, education, military, prison, and other records as may be pertinent.

i. counsel should observe, and consider arranging for, documentation of any marks or wounds pertinent to the case, and secure and document any transient physical evidence.

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§1907. Performance Standard 3: Investigation

A. Counsel's Responsibility to Investigate

1. Counsel has an ongoing duty to conduct a high quality, independent, exhaustive investigation of all matters relevant to the guilt phase, penalty phase, any possible agreed upon disposition, any potential claim for relief, and

any possible reduction of the case to a non-capital prosecution. A high quality, exhaustive investigation will be prompt, thorough, and independent.

2. Counsel should act promptly to ensure that the client is not prejudiced by the loss or destruction of evidence or information, whether in the form of physical evidence, records, possible witness testimony or information from a non-testifying witness. Counsel should take reasonable steps to gather and preserve evidence and information at risk of loss or destruction for later use in the case or for use by successor counsel. These steps may include retaining an expert to gather, preserve or examine evidence before it is altered or destroyed or to interview witnesses who may become unavailable. Counsel should be conscious of any procedural limitations or time bars and ensure that the investigation be conducted in a timely fashion to avoid any default or waiver of the client's rights. Similarly, counsel should be aware of or promptly become aware of the period for which relevant records are retained and ensure that the investigation be conducted in a timely fashion to avoid the destruction of relevant records.

3. The investigation relevant to the guilt phase of the trial should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

4. The investigation relevant to the penalty phase of the trial should be conducted regardless of any statement by the client that evidence bearing upon the penalty is not to be collected or presented. This investigation should comprise extensive and ongoing efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence or argument that may be offered by the prosecutor.

5. No area of inquiry or possible evidence in the guilt or penalty phase investigations should be ruled out until a thorough investigation has been conducted. Counsel should seek to investigate all available evidence and information and defer strategic decisions regarding what evidence to present until after a thorough investigation has been conducted. Both at guilt and penalty phases, counsel should not halt investigation after one seemingly meritorious defense theory has been discovered, but should continue to investigate, both following up on evidence supporting known defense theories and seeking to discover other potential defense theories.

6. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should not rely on a prior defense team's investigation or theory of the case, but rather should independently and thoroughly investigate and prepare the defense, especially where prior counsel had a conflict of interest, or there is reason to believe counsel's performance was deficient.

7. Counsel are responsible for ensuring that a high quality, exhaustive investigation is conducted but are not personally responsible for performing the actual investigation. A team should be assembled containing sufficient members possessing the appropriate skills and resources to conduct a high quality and exhaustive investigation.

B. Conduct of the Investigation

1. Counsel should conduct a high quality, independent and exhaustive investigation of all available sources of information utilizing all available tools including live witness interviews, compulsory process, public records law, discovery, scene visits, obtaining releases of confidential information, pre-trial litigation, the use of experts in the collection and analysis of particular kinds of evidence and audio/visual documentation. Principle sources of information in an investigation will include: information obtained from the client; information and statements obtained from witnesses; discovery obtained from the state; records collected; physical evidence; and direct observations.

2. A high quality, independent and exhaustive investigation will include investigation to determine the existence of other evidence or witnesses corroborating or contradicting a particular piece of evidence or information.

3. A high quality, independent and exhaustive investigation will include an investigation of all sources of possible impeachment of defense and prosecution witnesses.

4. Information and evidence obtained in the investigation provided should be properly preserved by memo, written statement, affidavit, or audio/video recordings. The manner in which information is to be obtained and recorded should be specifically approved by lead counsel having regard to any discovery obligations which operate or may be triggered in the case. In particular, the decision to take signed or recorded statements from witnesses should be made in light of the possibility of disclosure of such statements through reciprocal discovery obligations. Documents and physical evidence should be obtained and preserved in a manner designed to allow for its authentication and with regard to the chain of custody.

5. A high quality, exhaustive investigation should be conducted in a manner that permits counsel to effectively impeach potential witnesses, including state actors and records custodians, with statements made during the investigation. Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

6. A written record should be kept of all investigative activity on a case, including all record requests and responses and attempts to locate and interview witnesses, whether successful or unsuccessful. The written record should be sufficient to allow counsel to identify and prove, if necessary, when, where and under what circumstances each piece of information or evidence was obtained. The written record should also be sufficient to allow counsel to identify and prove that the investigation disclosed an absence of relevant information or evidence, for example, where a record custodian denies possession of relevant records or a witness denies knowledge of a relevant fact.

7. Counsel should conduct a high quality, exhaustive investigation of matters relevant to guilt and penalty phase, bearing in mind at all times the relevance of all information sought and obtained to each phase of the trial. Such an investigation shall extend beyond the particular client and

the particular offense charged and include an investigation of: other charged or uncharged bad acts that may be alleged directly or as impeachment; any co-defendant or alleged co-conspirator; any alternate suspects; any victim or victims; relevant law enforcement personnel and agencies; and, forensic and other experts involved in the case.

8. Considerations in respect of particular sources of information will include the following:

a. interviews with the client should be conducted in accordance with Performance Standard 2.B. In particular, counsel should be conscious of the need for multiple interviews, a relationship of trust and confidence with the client and for interviews on sensitive matters to be conducted by team members with appropriate skill and experience in conducting such interviews.

b. when interviewing witnesses, live witness interviews are almost always to be preferred and telephone interviews will rarely be appropriate. Barring exceptional circumstances, counsel should seek out and interview all potential witnesses including, but not limited to:

i. eyewitnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;

ii. potential alibi witnesses;

iii. witnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;

(a). members of the client's immediate and extended family;

(b). neighbors, friends and acquaintances who knew the client or his family throughout the various stages of his life;

(c). persons familiar with the communities where the client and the client's family live and have lived;

(d). former teachers, coaches, clergy, employers, co-workers, social service providers, and doctors;

(e). correctional, probation or parole officers

iv. witnesses to events other than the offense charged that may prove relevant to any affirmative defense or may be relied upon by the prosecution in its case in chief or in rebuttal of the defense case; and

v. government experts who have performed the examinations, tests, or experiments;

c. Discovery should be conducted in accordance with Performance Standard 5.F.

d. Counsel should be familiar with and utilize lawful avenues to compel the production of relevant records beyond formal discovery or compulsory process, including, the Public Records Law, the Freedom of Information Act, statutory entitlements to records such as medical treatment, military service, social security, social services, correctional and educational records. Counsel should also be familiar with and utilize avenues to obtain records through voluntary release and publicly available sources including web based searches and social media.

i. Counsel should strive to obtain records by means least likely to alert prosecution to the investigative steps being taken by the defense or the content of the records being obtained.

ii. Where appropriate, counsel should seek releases or court orders to obtain necessary confidential information about the client, co-defendant(s), witness(es), alternate suspect(s), or victim(s) that is in the possession of third parties. Counsel should be aware of privacy laws and procedural requirements governing disclosure of the type of confidential information being sought.

iii. Unless strategic considerations dictate otherwise, counsel should ensure that all requests, whether by compulsory process, public records law, or other specific statutory procedures, are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with such requests and must maintain a system for tracking requests that have been made: following up on requests; triggering enforcement action where requests are not complied with; documenting where responses have been received; and, identifying which documents have been received in response to which requests and on what date.

iv. Counsel should obtain all available information from the client's court files. Counsel should obtain copies of the client's prior court file(s), and the court files of other relevant persons. Counsel should also obtain the files from the relevant law enforcement and prosecuting agencies to the extent available.

v. Counsel should independently check the criminal records for both government and defense witnesses, and obtain a certified copy of all judgments of conviction for government witnesses, for possible use at trial for impeachment purposes.

e. Counsel should move promptly to ensure that all physical evidence favorable to the client is preserved, including seeking a protective court order to prevent destruction or alteration of evidence. Counsel should make a prompt request to the police or investigative agency for access to any physical evidence or expert reports relevant to the case. Counsel should examine and document the condition of any such physical evidence well in advance of trial. With the assistance of appropriate experts, counsel should reexamine all of the government's material forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Counsel should investigate not only the accuracy of the results of any forensic testing, but also the legitimacy of the methods used to conduct the testing and the qualifications of those responsible for the testing.

f. Counsel should take full advantage of the direct observation of relevant documents, objects, places and events by defense team members, experts and others.

i. Counsel should attempt to view the scenes of the alleged offense and other relevant events as soon as possible after counsel is assigned. The visit to any relevant scene should include visiting under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions). Counsel should extensively, precisely, and accurately document the condition of any relevant scene using the most appropriate and effective means, including audio-visual recordings, diagrams, charts, measurements, and descriptive memoranda. The condition of the scenes should always be

documented in a manner that will permit counsel to identify and prove the condition of the scenes without personally becoming a witness. Where appropriate, counsel should obtain independently prepared documentation of the condition of the scenes, such as maps, charts, property records, contemporaneous audio-visual recordings conducted by media, security cameras or law enforcement.

ii. Counsel should exercise the defendant's right to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state.

iii. Counsel for a client with one or more co-defendants should attend hearings of co-defendants, even if the issue at stake does not seem directly relevant to the client. Counsel should be particularly interested in discovering the strength of the prosecution's case against the co-defendant, and the similarities and differences between a co-defendant's defense and the client's.

iv. Counsel should also attend potentially relevant hearing involving state or defense witnesses.

C. Duty of counsel to conduct penalty phase investigation

1. Counsel should lead the defense team in a structured and supervised mitigation investigation where counsel is coordinating and, to the extent possible, integrating the case for life with the guilt phase strategy.

2. Despite the integration of the two phases of the trial, counsel should be alert to the different significance of items of evidence in the two phases and direct the investigation of the evidence for the penalty phase accordingly. Where evidence is relevant to both phases, counsel should not limit the investigation to guilt phase issues, but should further develop the mitigating evidence into a compelling case for life to be stressed at the penalty phase. All information obtained in the guilt phase investigation should be assessed for its significance to the penalty phase and, where possible, the guilt phase theory should reflect this assessment. Counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment, and conduct the investigation and development of evidence accordingly.

3. Counsel should direct the investigation of mitigating information as early as possible in the case. Mitigation investigation may affect many aspects of the case including the investigation of guilt phase defenses, charging decisions and related advocacy, motion practice, decisions about needs for expert evaluations, client relations and communication, and plea negotiations.

4. Counsel has an ongoing duty to conduct a high quality, independent and exhaustive investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than death.

5. Counsel should investigate all available sources of information and use all appropriate avenues to obtain all potentially relevant information pertaining to the client, his siblings, parents, and other family members extending back at least three generations, including but not limited to: medical history consisting of complete prenatal, pediatric, and adult health information (including hospitalizations, mental and physical illness or injury, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage); exposure to harmful substances in utero and in the environment; substance abuse and treatment history; mental health history; history of maltreatment and neglect; trauma history (including exposure to criminal violence, exposure to war, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences); educational history (including achievement, performance, behavior, activities, special educational needs including cognitive limitations and learning disabilities, and opportunity or lack thereof); social services, welfare, and family court history (including failures of government or social intervention, such as failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities), employment and training history (including skills and performance, and barriers to employability); military experience (including length and type of service, conduct, special training, combat exposure, health and mental health services); immigration experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior; prior adult and juvenile criminal and correctional experience; religious, gender, sexual orientation, ethnic, racial, cultural and community influences; socio-economic, historical, and political factors.

6. Counsel should not refrain from fully investigating potentially double-edged mitigation and such an investigation should include the full context of the mitigating evidence so as to reduce any potentially negative impact of such evidence at trial or to ensure that the mitigating effect of the evidence outweighs any negatives that may arise from the introduction of the evidence. Counsel should adopt such strategies as are necessary to reduce any potentially negative impact of such evidence, including effective voir dire, motions in limine, limiting instructions and the presentation of other evidence designed to maximize the mitigating effect of the evidence and reduce its negative potential.

7. While the client and the client's immediate family can be very important sources of information, they are far from the only potentially significant and powerful sources of information for mitigation evidence, and counsel should not limit the investigation to the client and his or her family. Further, when evaluating information from the client and the client's family, counsel should consider any impediments each may have to self-reporting or self-reflection.

8. Counsel should exhaustively investigate evidence of any potential aggravating circumstances and other adverse evidence that may be used by the state in penalty phase to determine how the evidence may be rebutted or mitigated.

a. Counsel should interview all known state witnesses for the penalty phase, including any expert witnesses.

b. Counsel's investigation of any prior conviction(s) which may be alleged against the client should include an investigation of any legal basis for overturning the conviction, including by appellate, state post-conviction or federal habeas corpus proceedings. Where such a basis exists, counsel should commence or cause to be commenced

litigation directed to overturning the conviction. Representation in such proceedings should be determined in accordance with Standard 1.H.

c. Counsel should actively consider the evidence that the state may be permitted to present in rebuttal of the defense case at penalty phase and investigate the evidence to determine how the evidence may be excluded, rebutted or mitigated.

9. Counsel should exhaustively investigate the possibility that there exists any absolute bar to the imposition of the death penalty.

a. Counsel should conduct a high quality, independent, exhaustive investigation to determine whether the client may suffer from intellectual disability. Counsel should not rely on his or her own assessment or impression of the client in determining whether the client has a viable claim of mental retardation as intellectual disability may be difficult to accurately assess and many clients will mask such disability even at the risk of their lives. Where a potential intellectual disability claim exists, the defense team should include members with expertise in the recognition, investigation and development of evidence of intellectual disability as well as the litigation of issues of intellectual disability. Where the defense team does not contain sufficient expertise in this regard, lead counsel should use all available avenues to secure additional counsel or other team members with expertise in investigating and litigating issues of intellectual disability.

b. In view of the decision of *Roper v. Simmons*, 543 U.S. 551 (2005), especially in cases involving foreign born clients, where the client's date of birth may be difficult to document, a special investigation may be required to ascertain the true "age" of the client to ensure that he is "death eligible" and, if not, ensure that the client is not exposed to the possibility of a death sentence.

c. Counsel should attempt to identify and develop other grounds which, though currently not providing an absolute bar to imposition of a death sentence, may in the future provide such exemption, such as serious mental illness, post-18 cognitive impairment, or guilt as a principal not directly responsible for the death.

d. Counsel should ensure that the presentation of evidence of an absolute bar to the death penalty, such as intellectual disability, is not limited to bare proof of the dispositive fact but fully presents the mitigating effect of the evidence, including the continuing mitigating effect of the evidence even where the evidence does not wholly satisfy the legal bar to the death penalty.

10. Counsel should direct team members to conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than death. Counsel should not fail to seek to interview any of the client's immediate family members. Multiple interviews will be necessary to establish trust, elicit sensitive information, and conduct a thorough and reliable life-history investigation. Team members should endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a capital sentencing proceeding

11. Counsel should direct team members to gather documentation to support the testimony of expert and lay witnesses, including, but not limited to, school, medical, employment, military, criminal and incarceration, and social service records, in order to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state, intellectual capacity, and life history that may explain or diminish the client's culpability for his conduct, demonstrate the absence of aggressive patterns in the client's behavior, show the client's capacity for empathy, depict the client's remorse, illustrate the client's desire to function in the world, give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison, explain possible treatment programs, rebut or explain evidence presented by the prosecutor, or otherwise support a sentence less than death. Records should be reviewed as they are received by the team so that any gaps in the evidence can be discovered and filled, further areas of investigation can be uncovered and pursued, and the defense theory can properly incorporate all available documentary evidence.

12. Counsel should direct team members to provide counsel with documentary evidence of the investigation through the use of such methods as memoranda, genealogies, social history reports, chronologies and reports on relevant subjects including, but not limited to, cultural, socioeconomic, environmental, racial, and religious issues in the client's life. The manner in which information is provided to counsel is determined on a case by case basis, in consultation with counsel, considering jurisdictional practices, discovery rules and policies.

13. Counsel should ensure that the investigation develops available evidence to humanize the client in the eyes of the jury, reflect the client's inherent dignity and value as a human being, demonstrate the client's positives and provide a basis for demonstrating these matters through factually valid narratives and exhibits, rather than merely adjectives. The investigation shall focus more broadly than identifying the causes of any offending conduct.

14. After thorough investigation counsel should begin selecting and preparing witnesses who will testify, who may include but are not limited to:

a. lay witnesses, or witnesses who are familiar with the client or his family, including but not limited to:

i. the client's family and those familiar with the client;

ii. the client's friends, teachers, classmates, co-workers, employers, and those who served in the military with the client, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history, military experience and religious, racial, and cultural experiences and influences upon the client or the client's family;

iii. social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

iv. witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

v. former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence.

vi. witnesses who can testify about the applicable alternative to a death sentence and/or the condition under which the alternative sentence would be served.

vii. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones;

b. expert witnesses, or witnesses with specialized training or experience in a particular subject matter. Such experts include, but are not limited to:

i. medical doctors, psychiatrists, psychologists, toxicologists, pharmacologists, social workers and persons with specialized knowledge of medical conditions, mental illnesses and impairments; neurological impairment (brain damage); substance abuse, physical, emotional and sexual maltreatment, trauma and the effects of such factors on the client's development and functioning;

ii. anthropologists, sociologists and persons with expertise in a particular race, culture, ethnicity, religion;

iii. persons with specialized knowledge of specific communities or expertise in the effect of environments and neighborhoods upon their inhabitants;

iv. persons with specialized knowledge about gangs and gang culture; and

v. persons with specialized knowledge of institutional life, either generally or within a specific institution, including prison security and adaptation experts.

15. Counsel should direct team members to aid in preparing and gathering demonstrative evidence, such as photographs, videotapes and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts and letters of praise or reference.

D. Securing the Assistance of Experts

1. Counsel should secure the assistance of experts where appropriate for:

a. an adequate understanding of the prosecution's case and the preparation and presentation of the defense including for consultation purposes on areas of specialized knowledge or those lying outside counsel's experience;

b. rebuttal of any portion of the prosecution's case at the guilt or sentencing phase of the trial;

c. investigation of the client's competence to proceed, capacity to make a knowing and intelligent waiver of constitutional rights, mental state at the time of the offense, insanity, diminished capacity and competence to be executed; and

d. obtaining an agreed disposition or assisting the client make a decision to accept or reject a possible agreed disposition.

2. An expert is retained to assist counsel in the provision of high quality legal representation. It is counsel's responsibility to provide high quality legal representation and the hiring of an expert, even a well-qualified expert, will not be sufficient to discharge this responsibility. Counsel has a responsibility to support and supervise the work of an expert to ensure that it is adequate and appropriate to the circumstances of the case.

3. When selecting an expert, counsel should consult with other attorneys, mitigation specialists, investigators and experts regarding the strengths and weaknesses of available experts. Counsel should interview experts and examine their credentials and experience before hiring them, including investigating the existence of any significant impeachment that may be offered against the expert and reviewing transcripts of the expert's prior testimony. If counsel discovers that a retained expert is unqualified or his opinions and testimony will be detrimental to the client, counsel should replace the expert and where appropriate, seek other expert advice.

4. When retaining an expert, counsel should provide clear information regarding the rate of payment, reimbursement of expenses, the method of billing, the timing of payment, any cap on professional fees or expenses and any other conditions of the agreement to retain. Counsel should ensure that the expert is familiar with the rules of confidentiality applicable in the circumstances and where appropriate, have the expert sign a confidentiality agreement. Counsel should monitor the hours of work performed and costs incurred by an expert to ensure that the expert does not exceed any pre-approved cap and in order to certify that the expert's use of time and expenses was appropriate in the circumstances.

5. Defense counsel should normally not rely on one expert to testify on a range of subjects, particularly where the witness lacks sufficient expertise in one or more of the areas to be canvassed. Counsel should determine whether an expert is to be used as a consulting expert or may testify in the case and should make appropriate distinctions in communications with the expert and disclosure of the identity and any report of the expert to the state. Counsel should use separate experts in the same field for consultation and possible testimony where the circumstances of the case make this necessary or appropriate.

6. Counsel should not simply rely on the opinions of an expert, but should seek to become sufficiently educated in the field to make a reasoned determination as to whether the hired expert is qualified, whether his or her opinion is defensible, whether another expert should be hired, and ultimately whether the area of investigation should be further pursued or abandoned.

7. Experts assisting in investigation and other preparation of the defense should be independent of the court, the state and any co-defendants. Expert work product should be maintained as confidential to the extent allowed by law. Counsel and support staff should use all available sources of information to obtain all necessary information for experts. Counsel should provide an expert with all relevant and necessary information, records, materials, access to witnesses and access to the client within sufficient time to allow the expert to complete a thorough assessment of the material provided, conduct any further investigation, formulate an opinion, communicate the opinion to counsel and be prepared for any testimony. Ordinarily, counsel should not retain an expert until a thorough investigation has been undertaken.

8. Counsel should not seek or rely upon an expert opinion in the absence of an adequate factual investigation

of the matters that may inform or support an expert opinion. While an expert may be consulted for guidance even where relatively little factual investigation has been completed, counsel may not rely upon an expert opinion in limiting the scope of investigation, making final decisions about the defense theory or determining the matters to be presented to any court in the absence of a factual investigation sufficiently thorough to ensure that the expert's opinion is fully informed and well supported. Ultimately, it is the responsibility of counsel, not the expert, to ensure that all relevant material is gathered and submitted to the expert for review.

9. Counsel should ensure that any expert who may testify is not exposed to privileged or confidential information beyond that which counsel is prepared to have disclosed by the witness during his or her testimony.

E. Development of a Strategic Plan for the Case

1. During investigation and trial preparation, counsel should develop and continually reassess a strategic plan for the case. This should include the possible defense theories for guilt phase, penalty phase, agreed upon disposition, litigation of the case and, where appropriate, litigation of the case on appeal and post-conviction review.

2. The defense theory at trial should be an integrated defense theory that will be reinforced by its presentation at both the guilt and penalty phase and should minimize any inconsistencies between the theories presented at each stage and humanize the client as much as possible. Counsel should strongly consider, with the consent of the client, forgoing a guilt-innocence phase plan that denies the defendant had any involvement in the offense and instead attempt to raise doubts about whether the offense was a first-degree murder (e.g., because of the defendant's role, mental state or intent).

3. A strategy for the case should be developed from the outset of counsel's involvement in the case and continually updated as the investigation, preparation and litigation of the case proceed. Counsel should not make a final decision on the defense theory to be pursued at trial or foreclose inquiry into any available defense theory until a high quality, exhaustive, independent investigation has been conducted and the available strategic choices fully considered.

4. However, a defense theory for trial should be selected in sufficient time to allow counsel to advance that theory during all phases of the trial, including jury selection, witness preparation, motions, opening statement, presentation of evidence, closing argument and jury instructions. Similarly, the defense theory for the post-verdict, appellate and post-conviction stages of the proceedings be selected in sufficient time to allow counsel to advance that theory in the substantive filings and hearings in the case.

5. In arriving at a defense theory counsel should weigh the positive aspects of the defense theory and also any negative effect the theory may have, including opening the door to otherwise inadmissible evidence or waiving potentially viable claims or defenses.

6. From the outset of counsel's involvement in the case, a strategic planning document or documents should be produced in writing and maintained in the client's file. The strategic planning document should be amended as the investigation, preparation and litigation of the case proceed to accurately reflect the current theory or theories. The strategic planning document should be made available to all members of the defense team to assist in coordinating work on the case. However, it should remain privileged and not be shared with non-team members or any team member or expert who may testify.

7. The current strategic planning document and any prior drafts of the document should be maintained in the client's file. The capital case supervisor should be given access to the strategic planning document and any prior drafts to assist in the supervision and support of the defense team.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1909. Performance Standard 4: Agreed Dispositions

A. Duty of Counsel to Seek an Agreed Disposition

1. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition.

2. After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition of the charges rather than proceeding to a trial or continuing with proceedings seeking judicial or executive review. In doing so counsel should fully explain the rights that would be waived by a decision to enter a plea or waive further review, the possible collateral consequences, and the legal factual and contextual considerations that bear upon that decision. Counsel should advise the client with complete candor concerning all aspects of the case, including a candid opinion as to the probable outcome. Counsel should make it clear to the client that the ultimate decision to enter a plea of guilty or waive further review has to be made by the client.

3. Counsel should keep the client fully informed of any discussions or negotiations for an agreed disposition and promptly convey to the client any offers made by the prosecution for an agreed disposition. Counsel shall not accept or reject any agreed-upon disposition without the client's express authorization.

4. Initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Despite a client's initial opposition, counsel should engage in an ongoing effort to persuade the client to pursue an agreed disposition that is in the client's best interest. Consideration of an agreed disposition should focus on the client's interests, the client's needs and the client's perspective.

5. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting investigation and litigation. Ongoing negotiations should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

B. Formal Advice Regarding Agreed Dispositions

1. Counsel should be aware of, and fully explain to the client:

a. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses, and any mandatory (minimum) punishment, sentencing enhancements, habitual offender statutes, mandatory consecutive sentence requirements including restitution, fines, assessments and court costs;

b. any collateral consequences of potential penalties less than death including but not limited to forfeiture of assets, deportation or the denial of naturalization or of reentry into the United States, imposition of civil liabilities, loss of parental rights, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, potential federal prosecutions, and the use of the disposition adverse to the client in penalty phase proceedings of other prosecutions of him, as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;

c. any registration requirements including sex offender registration and job specific notification requirements;

d. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements including any possible and likely sentence enhancements or parole consequences;

e. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentence;

f. available drug rehabilitation programs, psychiatric treatment, and health care;

g. the possible and likely place of confinement;

h. credit for pretrial detention;

i. the effect of good-time credits on the client's release date and how those credits are earned and calculated;

j. eligibility for correctional programs, work release and conditional leaves;

k. deferred sentences, conditional discharges and diversion agreements;

l. probation or suspension of sentence and permissible conditions of probation;

m. parole and post-prison supervision eligibility, applicable ranges, and likely post-prison supervision conditions; and

n. possibility of later expungement and sealing of records.

2. Counsel should be completely familiar with, and fully explain to the client:

a. concessions the client may make as part of an agreed disposition, including:

i. to waive trial and plead guilty to particular charges;

ii. to decline from asserting or litigating any particular pretrial motions; or to forego in whole or in part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications. However, the client should receive independent legal advice before being asked to waive any future claim of ineffective assistance of counsel.

iii. to proceed to trial on a particular date or within a particular time period;

iv. to enter an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case, or to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs;

v. to provide the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

vi. to enter an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

vii. to enter an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

viii. to enter an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

ix. to enter agreements such as those described in the above subsections respecting actual or potential charges in another jurisdiction.

b. benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

i. that the death penalty will not be sought;

ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

iii. that the client will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

iv. that the client will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

v. that the client may enter a conditional plea to preserve the right to further contest certain legal issues;

vi. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

vii. that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

viii. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

ix. that the prosecution will not present certain information, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, or will engage in or refrain from engaging in other actions with regard to sentencing;

x. such as those described in Subsections (i)-(ix) respecting actual or potential charges in another jurisdiction.

c. the position of any alleged victim (and victim's family members) with respect to conviction and sentencing. In this regard, counsel should:

i. consider whether interviewing or outreach to an alleged victim (or a victim's family members) is appropriate;

ii. consider to what extent the alleged victim or victims (or a victim's family members) might be involved in the plea negotiations;

iii. be familiar with any rights afforded the alleged victim or victims (and a victim's family members) under La. Const. Art I, § 25, La. R.S. 46:1841 et. seq. or other applicable law; and

iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

3. In conducting plea negotiations, counsel should be familiar with and should fully explain to the client:

a. the various types of pleas that may be agreed to, including a plea of guilty, a nolo contendere plea in which the client is not required to personally acknowledge his or her guilt (North Carolina v. Alford, 400 U.S. 25 (1970)), and a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error (State v. Crosby, 338 So.2d 584 (La. 1976));

b. the advantages and disadvantages of each available plea according to the circumstances of the case; and

c. whether any plea agreement is or can be made binding on the court and prison and parole authorities, and whether the client or the state has a right to appeal the conviction and/or sentence and what would happen if an appeal was successful.

4. In conducting plea negotiations, counsel should become familiar with and fully explain to the client, the practices, policies, and concerns of the particular jurisdiction, judge and prosecuting authority, probation department, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations.

5. In conducting plea negotiations counsel should be familiar with and fully explain to the client any ongoing exposure to prosecution in any other jurisdiction for the same or related offending and where possible, seek to fully resolve the client's exposure to prosecution for the offending and any related offending.

C. The Advice and Decision to Enter a Plea of Guilty

1. Subject to considerations of diminished capacity, counsel should abide by the client's decision, after meaningful consultation with counsel, as to a plea to be entered.

2. Counsel should explain all matters relevant to the plea decision to the extent reasonably necessary to permit the client to make informed decisions regarding the appropriate plea. In particular, counsel should investigate and explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense at both guilt and penalty phase and on appellate post-conviction and habeas corpus review.

3. Counsel should carefully and thoroughly explore the client's understanding of the matters explained including, in particular, the procedural posture of his case, the trial and appellate process, the likelihood of success at trial, the likely disposition at trial and the practical effect of each disposition, the practical effect of each available plea decision and counsel's professional advice on which plea to enter.

4. In providing the client with advice, counsel should refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make an informed decision having regard to these considerations.

5. Counsel should pursue every reasonable avenue to overcome any barriers to communication and trust in discussing a possible agreed disposition. Counsel should take all reasonable steps to ensure that the client's capacity to make a decision in his own best interests is not impaired, for example, by the effects of mental health, family dysfunction or conditions of confinement.

6. The considerations applicable to the advice and decision to enter a plea of guilty will also apply to the decision to enter into an agreed disposition in an appellate or post-conviction posture.

D. Entering the Negotiated Plea before the Court

1. Notwithstanding any earlier discussions with the client, prior to the entry of the plea, counsel should meet with the client in a confidential setting that fosters full communication and:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense;

d. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court;

e. ensure that the client is mentally competent and psychologically capable of making a decision to enter a plea of guilty;

f. be satisfied that the client admits guilt or believes there is a substantial likelihood of conviction at trial, and believes that it is in his or her best interests to plead guilty under the plea agreement rather than risk the consequence of conviction after trial; and

g. be satisfied that the state would likely be able to prove the charge(s) against the client at trial.

2. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

3. Subsequent to the acceptance of the plea, counsel should review and explain the plea proceedings to the client, and respond to any questions or concerns the client may have.

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§1911. Performance Standard 5: Pre-Trial Litigation

A. Obligations regarding court hearings

1. Counsel should prepare for and attend all court proceedings involving the client and/or the client's case. Counsel should be present, alert and focused on client's best interests during all stages of the court proceedings.

2. As soon as possible after entry of counsel into the case, counsel should provide general advice to the client on how court proceedings will be conducted, how the client should conduct himself in court settings, how the client should communicate with counsel and others in the court setting and how the client should react to events in court. Counsel should advise the client on appropriate demeanor and presentation in court and take reasonable steps to assist the client in maintaining an appropriate demeanor and presentation.

3. Prior to any court hearing, counsel should meet with and explain to the client the purpose and procedure to be followed at the hearing. Where the client may be directly addressed by the court or asked to speak on the record, counsel should warn the client in advance and advise the client on how to proceed. Counsel should advise the client that he has the right to confer with counsel before answering any question, even if it means interrupting the proceedings.

4. Counsel should take all necessary steps to overcome any barriers to communication or understanding by the client during court proceedings, including the use of interpreters, slowing the rate of proceedings, taking adequate breaks, using appropriate language and explaining proceedings to the client during the hearing.

5. Counsel should document in the client's file a summary of all pertinent information arising from each court hearing and take particular care to memorialize communications and events that will not appear in the court record or transcript.

6. Counsel should ensure that the court minutes and any transcript accurately reflect the orders, statements and events occurring in court and that all exhibits have been marked, identified and placed into the record.

B. Obligations of Counsel Following Arrest

1. Counsel or a representative of counsel have an obligation to meet with incarcerated clients for an initial interview within 24 hours of counsel's initial entry into the case, barring exceptional circumstances, and shall take other prompt action necessary to provide high quality legal representation including:

a. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoking any waivers of these protections purportedly given by the client, as soon as practicable by correspondence and a notice of appearance or other pleading filed with the State and court. More specifically, counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate and assert the client's right to counsel at any post-arrest procedure such as a line-up, medical evaluation, psychological evaluation, physical testing or the taking of a forensic sample.

b. where possible, ensuring that capitally certified counsel shall represent the client at the first appearance hearing conducted under La. C. Cr. P. art. 230.1 in order to contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full bond hearing at a later date), to invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

2. Prior to indictment, counsel should take steps to secure the pretrial release of the client where such steps will not jeopardize the client's ability to defend against any later indictment. Where the client is unable to obtain pretrial release, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health and security needs are being met.

3. While counsel should only seek to submit evidence for the client to the grand jury in exceptional cases, counsel should consider in each particular case whether such an application is appropriate in the circumstances.

4. Where counsel is assigned to the case of a capital defendant arrested outside of Louisiana, counsel should immediately contact any attorney representing the client in the jurisdiction of arrest to share information as appropriate and coordinate the representation of the client. Where the client is not represented in the jurisdiction of arrest, counsel should take all reasonable steps to arrange effective representation for him. Ordinarily, counsel should travel to the jurisdiction of arrest to consult with and provide legal advice to the client with respect to the capital case and the ramifications for the capital case of waiving or contesting extradition. Counsel should conduct the initial interviews with the client, the assertion and protection of the client's rights and the investigation of the case, including the circumstances of the arrest, in accordance with these Standards, regardless of whether the client is being held in the jurisdiction of arrest or has been extradited to Louisiana. Counsel should not wait for the client to be extradited before commencing active representation of the client.

C. Counsel's Duties at the Preliminary Hearing

1. In the absence of exceptional circumstances, counsel should move for a preliminary hearing in all pre-indictment cases. Counsel should move for and attempt to secure a preliminary hearing in a timely fashion having regard to prosecution practices in the particular jurisdiction and the likely timing of any indictment.

2. While the primary function of the preliminary hearing is to ensure that probable cause exists to hold the client in custody or under bond obligation, the hearing may provide collateral advantages for the client by: creating a transcript of cross-examination of state's witnesses for use as an impeachment tool; preserving testimony favorable to the client of a witness who may not appear at trial; providing discovery of the state's case; allowing for more effective and earlier preparation of a defense; and, persuading the prosecution to refuse the charges or accept lesser charges for prosecution.

3. Counsel should conduct as thorough an investigation of the case as is possible in the time allowed before the preliminary hearing to best inform strategic decisions regarding the subpoenaing of witnesses and the scope and nature of cross-examination. Counsel should fully exercise the rights to subpoena and cross-examine witnesses to seek a favorable outcome at the preliminary hearing and maximize the collateral advantages to the client of the proceedings.

4. In preparing for the preliminary hearing, the attorney should be familiar with:

a. the elements of each of the offenses alleged;

b. the requirements for establishing probable cause;

c. factual information which is available concerning the existence of or lack of probable cause;

d. the tactics of full or partial cross-examination, including the potential impact on the admissibility of any witness' testimony if they are later unavailable for trial and how to respond to any objection on discovery grounds by showing how the question is relevant to probable cause;

e. additional factual information and impeachment evidence that could be discovered by counsel during the hearing; and

f. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

5. Counsel should not present defense evidence, especially the client's testimony, except in unusual circumstances where there is a sound tactical reason that overcomes the inadvisability of disclosing the defense case at this stage.

D. Counsel's Duties at Arraignment

1. Where possible, capitally certified counsel should be assigned prior to arraignment and should represent the client at arraignment.

2. Counsel should preserve the client's rights by entering a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so.

3. If not already done, counsel should assert the client's fifth and sixth amendment rights to silence and to counsel and should review with the client the need to remain silent.

4. If not already done, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health and security needs are being met.

E. Counsel's Duty in Pretrial Release Proceedings

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release pursuant to C.Cr.P. Art. 331, and, where appropriate, to make a proposal concerning conditions of release. Client's charged with capital crimes remain eligible to be admitted to bail even after indictment and counsel should consider and, where appropriate, pursue an application to have the client admitted to bail.

2. Counsel should carefully consider the strategic benefits or risks of making an application for bail, including the timing of any application and any collateral benefits or risks that may be associated with a bail application.

3. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

F. Formal and Informal Discovery

1. Counsel

2. Unless:

a. the precise statutory provision relied upon for the charge or indictment, including any aggravating factors that may be relied upon by the prosecution to establish first degree murder under R.S. 14:30;

b. any aggravating circumstances that may be relied upon by the prosecution in the penalty phase pursuant to La. C. Cr. P. art. 905.4;

c. any written, recorded or oral statement, confession or response to interrogation made by or attributed to the client. Such discovery should, where possible, include a copy of any such confession or statement, the substance of any oral confession or statement and details as to when, where and to whom the confession or statement was made;

d. any record of the client's arrests and convictions and those of potential witnesses;

e. any information, document or tangible thing favorable to the client on the issues of guilt or punishment, including information relevant for impeachment purposes;

f. any documents or tangible evidence the state intends to use as evidence at trial, including but not limited to: all books, papers, documents, data, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

g. any documents or tangible evidence obtained from or belonging to the client, including a list of all items seized from the client or from any place under the client's dominion;

h. any results or reports and underlying data of relevant physical or mental examinations, including medical records of the victim where relevant, and of scientific tests, experiments and comparisons, or copies thereof, intended for use at trial or favorable to the client on the issues of guilt or punishment;

i. one half of any DNA sample taken from the client;

j. any successful or unsuccessful out-of-court identification procedures undertaken or attempted;

k. any search warrant applications, including any affidavit in support, search warrant and return on search warrant;

l. any other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

m. any other adjudicated or unadjudicated conduct that may be relied upon by the prosecution in the penalty phase;

n. any victim impact information that may be relied upon by the prosecution in the penalty phase, including any

information favorable to the client regarding the victim or victim impact;

o. any statements of prosecution witnesses, though counsel should be particularly sensitive to the effect of any reciprocal discovery obligation triggered by such discovery;

p. any statements of co-conspirators;

q. any confessions and inculpatory statements of co-defendant(s) intended to be used at trial, and any exculpatory statements; and

r. any understanding or agreement, implicit or explicit, between any state actor and any witness as to consideration or potential favors in exchange for testimony, including any memorandum of understanding with a prisoner who may seek a sentence reduction.

3. Counsel should ensure that discovery requests extend to information and material in the possession of others acting on the government's behalf in the case, including law enforcement. This is particularly important where the investigation involved more than one law enforcement agency or law enforcement personnel from multiple jurisdictions.

4. Counsel should take all available steps to ensure that prosecutors comply with their ethical obligations to disclose favorable information contained in Rule 3.8(d) of the *Louisiana Rules of Professional Conduct*.

5. Counsel should ensure that discovery requests extend to any discoverable material contained in memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by witnesses or prospective witnesses, other than the client, to the district attorney, or to agents of the state.

6. Counsel should not limit discovery requests to those matters the law clearly requires the prosecution to disclose but should also request and seek to obtain other relevant information and material.

7. When appropriate, counsel should request open file discovery. Where open file discovery is granted, counsel should ensure that the full nature, extent and limitations of the open file discovery policy are placed on the court record. Where inspection of prosecution or law enforcement files is permitted, counsel should make a detailed and complete list of the materials reviewed and file this list into the court record.

8. Counsel should seek the timely production and preservation of discoverable information, documents or tangible things likely to become unavailable unless special measures are taken. If counsel believes the state may destroy or consume in testing evidence that is significant to the case (e.g., rough notes of law enforcement interviews, 911 tapes, drugs, or biological or forensic evidence like blood or urine samples), counsel should also file a motion to preserve evidence in the event that it is or may become discoverable.

9. Counsel should establish a thorough and reliable system of documenting all requests for discovery and all items provided in discovery, including the date of request and the date of receipt. This system should allow counsel to identify and prove, if necessary, the source of all information, documents and material received in discovery, when they were provided and under what circumstances. This system should allow counsel to identify and prove, where necessary, that any particular piece of information, document or material had not previously been provided in discovery.

10. Counsel should scrupulously examine all material received as soon as possible to identify and document the material received, to identify any materials that may be missing, illegible or unusable and to determine further areas of investigation or discovery. Where access is given to documents, objects or other materials counsel should promptly and scrupulously conduct an inspection of these items and carefully document the condition and contents of the items, using photographic or audio-visual means when appropriate. Expert assistance should be utilized where appropriate to ensure that a full and informed inspection of the items is conducted. Where a reproduction of an original document or item is provided (including photocopies, transcripts, photographs, audio or video depictions) counsel should promptly and scrupulously inspect and document the original items in order to ensure the accuracy of the reproduction provided and to identify any additional information available from inspection of the original that may not be available from the reproduction.

11. Counsel should file with the court an inventory of all materials received or inspected in discovery. This inventory should be sufficiently detailed to identify precisely each piece of information, document or thing received including, for example, how many pages a document contained and any pages that may have been missing.

12. Unless strong strategic considerations dictate otherwise, counsel should ensure that all discovery requests are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with discovery demands.

13. Where the state asserts that requested information is not discoverable, counsel should, where appropriate, request an in camera inspection of the material and seek to have the withheld material preserved in the record under seal. Counsel should recognize that a judge undertaking in camera review may not have sufficient understanding of the possible basis for disclosure, especially the ways in which information may be favorable to defense in the particular case. Where in camera review is undertaken, counsel should take all available steps to ensure that the judge is sufficiently informed to make an accurate assessment of the information, including through the use of ex parte and under seal proffer, where appropriate and permissible.

14. Counsel should timely comply with requirements governing disclosure of evidence by the defendant and notice of defenses and expert witnesses. Counsel also should be aware of the possible sanctions for failure to comply with those requirements. Unless justified by strategic considerations, counsel should not disclose any matter or thing not required by law and should seek to limit both the scope and timing of any defense discovery. Counsel should take all reasonable steps to prevent the prosecution from obtaining private or confidential information concerning the client, including matters such as medical, mental health, social services, juvenile court, educational and financial information.

15. Counsel should understand the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars,

lineups, photo show-ups, voice identifications, and physical specimens like blood, semen, and urine), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the required preservation of the record. Counsel should raise appropriate objections to requests for non-testimonial evidence and should insist on appropriate safeguards when these procedures are to occur. Counsel should also prepare the client for participation in such procedures. Counsel should accompany the client, insist that the police not require the client to answer any questions and, if necessary, return to court before complying with the order.

G. The Duty to File Pretrial Motions

1. Counsel at every stage of the case, exercising professional judgment in accordance with these Standards should consider all legal and factual claims potentially available, including all good faith arguments for an extension, modification or reversal of existing law. Counsel should thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.

2. Counsel should give consideration to the full range of motions and other pleadings available and pertinent to a capital case when determining the motions to be filed in the particular case, including motions to proceed ex parte. Counsel should file motions tailored to the individual case that provide the court with all necessary information, rather than pro forma or boilerplate motions. The requirement that counsel file motions tailored to the individual case is not a prohibition against also filing motions that raise previously identified legal issues, nor is it a prohibition on the filing of boilerplate motions where no tailoring of the motion is necessary or appropriate in the case.

3. The decision to file pretrial motions and memoranda should be made after considering the applicable law in light of the circumstances of each case. Each potential claim should be evaluated in light of:

a. the unique characteristics of death penalty law and practice;

b. the potential impact of any pretrial motion or ruling on the strategy for the penalty phase;

c. the near certainty that all available avenues of appellate and post-conviction relief will be pursued in the event of conviction and imposition of a death sentence;

d. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited;

e. the significant limitations placed upon factual development of claims in subsequent stages of the case; and

f. any other professionally appropriate costs and benefits to the assertion of the claim.

4. Among the issues that counsel should consider addressing in pretrial motions practice are:

a. Matters potentially developed in early stages of investigation, including:

i. the pretrial custody of the accused;

ii. the need for appropriate, ongoing and confidential access to the client by counsel, investigators, mitigation specialists and experts;

iii. the need for a preliminary hearing, including a post-indictment preliminary hearing;

iv. the statutory, constitutional and ethical discovery obligations including the reciprocal discovery obligations of the defense;

v. the need for and adequacy of a bill of particulars;

vi. the need for and adequacy of notice of other crimes or bad acts to be admitted in the guilt or penalty phase of trial;

vii. the need for and adequacy of notice of any victim impact evidence;

viii. the preservation of and provision of unimpeded access to evidence and witnesses;

ix. the use of compulsory process to complete an adequate investigation, including the possible use of special process servers;

x. the prevention or modification of any investigative or procedural step proposed by the state that violates any right, duty or privilege arising out of federal state or local law or is contrary to the interests of the client;

xi. access to experts or resources which may be denied to an accused because of his indigence;

xii. the defendant's right to a speedy trial;

xiii. the defendant's right to a continuance in order to adequately prepare his or her case;

xiv. the need for a change of venue;

xv. the need to obtain a gag order;

xvi. the need to receive notice of and be present at hearings involving co-defendants and to receive copies of pleadings filed by any co-defendant;

xvii. the dismissal of a charge on double jeopardy grounds;

xviii. the recusal of the trail judge, the prosecutor and/or prosecutor's office;

xix. competency of the client;

xx. intellectual disability;

xxi. the nature, scope and circumstances of any testing or assessment of the client;

xxii. extension of any motions filing deadline or the entitlement to file motions after the expiration of a motions deadline; and

xxiii. requiring the state to respond to motions in writing.

b. Matters likely to be more fully developed after comprehensive discovery, including:

i. the constitutionality of the implicated statute or statutes, including the constitutionality of the death penalty or the proposed method of execution;

ii. the potential defects in the grand jury composition, the charging process or the allotment,

iii. the sufficiency of the charging document under all applicable statutory and constitutional provisions, as well as other defects in the charging document such as surplusage in the document which may be prejudicial;

iv. any basis upon which the indictment may be quashed;

v. the adequacy and constitutionality of any aggravating factors or circumstances;

vi. the propriety and prejudice of any joinder of charges or defendants in the charging document;

vii. the permissible scope and nature of evidence that may be offered by the prosecution in aggravation of penalty or by the defense in mitigation of penalty;

viii. the constitutionality of the death penalty both generally and as applied in Louisiana;

ix. abuse of prosecutorial discretion in seeking the death penalty;

x. the suppression of evidence or statements gathered or presented in violation of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional and statutory provisions;

xi. suppression of evidence or statements gathered in violation of any right, duty or privilege arising out of state or local law;

xii. the admissibility of evidence other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

xiii. the admissibility of any unrelated criminal conduct that may be relied upon by the prosecution in the penalty phase;

xiv. the suppression of a prior conviction obtained in violation of the defendant's right to counsel;

xv. notices of affirmative defenses with all required information included; and

xvi. notices necessary to entitle the client to present particular forms of evidence at trial, such as alibi notice and notice of intention to rely upon mental health evidence.

c. Matters likely arising later in pretrial litigation and in anticipation of trial, including:

i. *in-limine* motions to exclude evidence that is inadmissible as a result of a lack of relevance, probative force being outweighed by prejudicial effect, the lack of a necessary foundation, failure to satisfy the threshold for expert evidence or for other reasons;

ii. the constitutionality of the scope of and any limitations placed upon any affirmative defense or the use of a particular form of favorable evidence;

iii. the competency of a particular witness or class of witnesses;

iv. the nature and scope of victim impact evidence;

v. *in-limine* motions to prevent prosecutorial misconduct or motions to halt or mitigate the effects of prosecutorial misconduct;

vi. matters of trial evidence or procedure at either phase of the trial which may be appropriately litigated by means of a pretrial motion *in limine*;

vii. matters of trial or courtroom procedure, including: recordation of all proceedings, including bench and chambers conferences; timing and duration of hearings; prohibition of ex parte communications; manner of objections; ensuring the client's presence at hearings; medication of the client; avoiding prejudice arising from any security measures;

viii. challenges to the process of establishing the jury venire;

ix. the use of a jury questionnaire;

x. the manner and scope of voir dire, the use of cause and peremptory challenges and the management of sequestration;

xi. the desirability and circumstances of the jury viewing any scene; and

xii. the instructions to be delivered at guilt and penalty phase.

5. Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

a. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;

b. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted; and

c. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

6. Counsel should timely file motions according to the applicable rules and caselaw, provide notice of an intention to file more motions where appropriate, reserve the right to supplement motions once discovery has been completed, offer good cause and seek to file appropriate motions out of time and seek to file necessary and appropriate motions out of time even where good cause for delay is not available. If counsel needs more time to file a motion, counsel should request more time.

7. Counsel should give careful consideration before joining in co-defendants' motions and should avoid any possibility that the client will be deemed to have joined in a co-defendant's motions without a knowing, affirmative adoption of the motions by counsel.

8. As a part of the strategic plan for the case, counsel should maintain a document describing the litigation theory in the case, including a list of all motions considered for filing and the reason for filing or not filing each motion considered. The litigation theory document should also detail the timing and disposition of all motions. The current litigation theory document and any prior drafts of the document should be maintained in the client's file. The capital case supervisor should be given access to the litigation theory document and any prior drafts to assist in the supervision and support of the defense team.

H. Preparing, Filing, and Arguing Pretrial Motions

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. Counsel should seek an evidentiary hearing for any motion in which factual findings or the presentation of evidence would be in the client's interests. Where an evidentiary hearing is denied, counsel should make a proffer of the proposed evidence.

2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. factual investigation and discovery as well as careful research of appropriate case law relevant to the claim advanced;

b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;

c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to

the hearing, including the benefits and potential consequences of having the client and other defense witnesses testify;

d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial;

e. obtaining the assistance of expert witnesses where appropriate and necessary;

f. careful preparation of any witnesses who are called, especially the client;

g. careful preparation for and conduct of examination or cross-examination of any witness, having particular regard to the possibility that the state may later seek to rely upon the transcript of the evidence should the witness become unavailable;

h. consideration of any collateral benefits or disadvantages that may arise from the evidentiary hearing;

i. obtaining stipulation of facts by and between counsel, where appropriate; and

j. preparation and submission of a memorandum of law where appropriate.

3. When asserting a legal claim, counsel should present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction. Counsel should pursue good faith arguments for an extension, modification or reversal of existing law.

4. Counsel should ensure that a full record is made of all legal proceedings in connection with the claim. If a hearing on a pretrial motion is held in advance of trial, counsel should obtain the transcript of the hearing where it may be of assistance in preparation for or use at trial.

5. In filing, scheduling, contesting or consenting to any pretrial motion, including scheduling orders, counsel should be aware of the effect it might have upon the client's statutory and constitutional speedy trial rights.

I. Continuing Duty to File Motions

1. Counsel at all stages of the case should be prepared to raise during subsequent proceedings any issue which is appropriately raised at an earlier time or stage, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

2. Further, counsel should be prepared to renew a motion or supplement claims previously made with additional factual or legal information if new supporting information is disclosed or made available in later proceedings, discovery or investigation.

3. Where counsel has failed to timely provide a required notice or file a motion, counsel should seek to file the motion or notice out of time regardless of whether good cause exists for the earlier failure to file and be prepared to present any argument for good cause that is available. Where a court bars a notice or motion as untimely, counsel should ensure that a copy of the notice or motion is maintained in the record and available for any subsequent review.

4. Counsel should also renew pretrial motions and object to the admission of challenged evidence at trial as necessary to preserve the motions and objections for appellate review.

5. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the capital proceeding.

J. Duty to File and Respond to Supervisory Writ Applications

1. Where appropriate, counsel should make application for supervisory writs in the Circuit Court of Appeal or the Louisiana Supreme Court following an adverse district court ruling or failure to rule. Counsel should give specific consideration to: the extent to which relief is more likely in an interlocutory posture or after a final decision on the merits of the case; the extent of prejudice from the ruling of the district court and the likely ability to demonstrate that prejudice following a final decision on the merits of the case; the impact of the district court's current ruling on the conduct of the defense in the absence of intervention by a reviewing court; the impact of a ruling by a reviewing court in a writ posture on any subsequent review on direct appeal; the adequacy of the record created in the district court and whether the record for review may be improved through further district court proceedings.

2. Counsel should seek expedited consideration or a stay where appropriate and consider the simultaneous filing of writ applications in the Court of Appeal and Supreme Court in emergency circumstances.

3. Counsel should take great care to ensure that all filings in the Courts of Appeal and the Louisiana Supreme Court comply with the requirement of the relevant rules of Court, including any local rules.

4. Counsel should ensure that an adequate record is created in the district court to justify and encourage the exercise of the supervisory jurisdiction of the Courts of Appeal or Louisiana Supreme Court.

5. Counsel should seek to respond to any state application for supervisory writs except where exceptional circumstances justify the choice not to respond.

6. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including advising the capital case supervisor of the situation and seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1913. Performance Standard 6: Special Circumstances

A. Duties of Counsel at Re-trial

1. The standards for trial level representation apply fully to counsel assigned to represent a client at a re-trial of the guilt or penalty phase. Counsel should be careful to clarify on the record the status of prior rulings made and orders issued in the proceedings. Where appropriate, counsel should seek to renew and re-litigate pre-trial claims, and to raise any new claims which have developed or been discovered since the first trial. Counsel should not rely on the investigation or presentation of evidence from the first trial, but rather should start anew and seek to develop and present all available evidence, with the knowledge gained

from the results of the first trial. Except in circumstances where counsel has substantial reason to believe the results will be different or no other witnesses are available, counsel should not present witnesses who provided unhelpful testimony earlier in the case.

B. Continuing Responsibility to Raise Issue of Client's Incompentence

1. Competence is far more likely to be present as an issue in a capital case than a non-capital case due to the high prevalence of mental illness and impaired reasoning in the population of capital clients and the increased likelihood of incompetence due to the nature of the charge, the complexity of the case and the gravity of the decisions with which the client is faced. As a result, counsel should proceed with increased sensitivity to the question of competency and ensure that the defense team has members with sufficient skill and experience to identify and respond to issues relating to competency.

2. Counsel should be sensitive to the increased risk in a capital case that given the nature of the charge, the complexity of capital cases and the life and death stakes of the case a client may not sufficiently understand and appreciate: the nature of the charge and its seriousness; the defenses available at guilt and penalty phase and how each affects the other; the consequences of each available plea on both guilt and penalty phase; and, the range of possible verdicts and the consequences of those verdicts at guilt and penalty phase.

3. In considering the client's ability to assist counsel in a capital case, counsel should have particular regard to the requirement that the client be able to assist counsel not only as to the guilt phase but in the development of the mitigation case and the presentation of the penalty phase case; a process that will include an exhaustive investigation of the client's character, history, record, the offense and other factors which may provide a basis for a sentence less than death. The possibility of a death sentence and the necessity to prepare for and present a penalty phase case greatly increase the complexity and weight of the demands placed upon the client in assisting counsel, including considerations of whether the client: is able to recall and relate facts pertaining to his actions and whereabouts at certain times; is able to maintain a consistent defense; is able to listen to the testimony of witnesses and inform counsel of any distortions or misstatements; has the ability to make simple decisions in response to well explained alternatives; is capable of testifying in his own defense; and, is apt to suffer a deterioration of his mental condition under the stress of trial or at a later stage of the case.

4. Counsel involved in a capital case at stages following the trial should be alert to additional concerns regarding the client's mental state, functioning and ability including existing issues that could be exacerbated by the reality that a death sentence has been imposed, that an execution date is approaching, as well as by the effects of confinement, particularly prolonged confinement, on death row, such as the development or progression of depression or other mental illnesses. Similarly, counsel at later stages should have particular regard to issues such as the client's ability to establish relationships with new counsel at later stages in the case, especially where earlier relationships were difficult for the client, and the client's ability to assist counsel with tasks such as investigations taking place years after the trial when deficiencies such as memory loss may become more pervasive.

5. In every capital case, counsel should conduct a thorough, sensitive and ongoing inquiry into the competence of the client. Where concerns exist about a client's competence, counsel should ensure that the defense team documents in the client's file observations and interactions relevant to the client's competence.

6. Recognizing that raising competency may expose the client himself and otherwise confidential information to state actors, counsel should not raise competency unless satisfied that: a sufficient investigation has been conducted to make a reliable strategic decision in this regard; the client is likely not competent; and, the benefits to the client of raising competency outweigh the negatives. Counsel should consider the possibility that any information disclosed in competency proceedings will become admissible at trial as a result of the client's mental health being placed in issue.

7. In considering whether to raise competence, counsel should take into account all relevant circumstances, including: the likely outcome of an assessment by a sanity commission; the likely outcome of an assessment by a state expert; any negative findings, including malingering findings, that may arise from an assessment of the client; any negative information that may be divulged to the state from a review of records; any waiver of confidentiality arising from raising competence; the impact upon counsel's relationship with the client and his family of raising competence; the impact of raising competence before or during trial on any subsequent guilt or penalty phase presentation; and, the effect on any subsequently available claim that the client was incompetent.

8. The delay caused by raising a question of competence with the court is not a proper reason for raising competence. Seeking to defray defense costs by having a court appointed mental health examination is not a proper reason for raising competence.

9. Prior to raising competence with the court, counsel should consult with a defense mental health expert, including having the expert review the available information and records relating to the client and, where appropriate, assessing the client.

10. Counsel should fully advise the client concerning the procedures for mental examinations, the reasons competence is in question, the possibility of hospitalization, and the consequences of an incompetency determination.

11. Where the court or the state raises the issue of competency, counsel should consider whether it is appropriate to resist any competency examination or advise the client not to cooperate with any such examination.

12. Where a sanity commission is appointed, counsel should ensure that the members of the sanity commission are independent and appropriately qualified. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the sanity commission.

13. Where the state seeks an examination of the client by a physician or mental health expert of the state's choice, counsel should consider opposing or seeking to limit such an examination and should also consider whether to advise the client not to cooperate with any such examination. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the state's expert.

14. Counsel should obtain copies of: each examiner's report, all underlying notes and test materials; and, all records and materials reviewed. Where the client is hospitalized or otherwise placed under observation, counsel should obtain copies of all records of the hospitalization or observation.

15. Counsel should not stipulate to the client's competence where there appears a reasonable possibility that the client is not competent. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing where there is a good faith basis to doubt the client's competency.

16. At the competency hearing, counsel should protect and exercise the client's constitutional and statutory rights, including cross-examining the sanity commissioners and the state's witnesses, calling witnesses on behalf of the client including experts, and making appropriate evidentiary objections. Counsel should make sure that the inquiry does not stray beyond the appropriate boundaries. Counsel should consider the advantages and disadvantages to the client's whole case when determining how to conduct the competency hearing.

17. Counsel may elect to relate to the court personal observations of and conversations with the client to the extent that counsel does not disclose client confidences. Counsel may respond to inquiries about the attorney-client relationship and the client's ability to communicate effectively with counsel to the extent that such responses do not disclose the confidential or privileged information.

18. If a client is found to be incompetent, counsel should advocate for the least restrictive level of supervision and the least intrusive treatment.

19. Where competency is at issue, or where the client has been found incompetent, counsel has a continuing duty to investigate and prepare the case. Where a client has been found irrestorably incompetent, counsel should continue to investigate and prepare the case sufficiently to ensure that the client will not be prejudiced by any delay or hiatus in the preparation of the case should he subsequently be returned to competence and the prosecution resumed.

20. Where a capital client is found incompetent or irrestorably incompetent, capitally certified counsel should remain responsible for all competency reviews.

21. A previously competent client may become incompetent over the course of a case and particularly under the stress of hearings and trial. Counsel should be vigilant and constantly reassess the client's competence and be prepared to raise the matter when appropriate. It is never untimely to raise a question concerning a client's competence.

22. Some clients object strenuously to taking psychotropic medication and counsel may be called upon to advocate for protection of the client's qualified right to refuse medication.

C. Duties of Counsel When Client Attempts to Waive Right to Counsel, and Duties of Standby and Hybrid Counsel

1. When a client expresses a desire to waive the right to counsel, counsel should take steps to protect the client's interests, to avoid conflicts and to ensure that the client makes a knowing, voluntary and intelligent decision in exercise of his rights under the Sixth Amendment and La. Const. Art. I, § 13. In particular, counsel should:

a. meet with the client as soon as possible to discuss the reasons the client wishes to proceed pro se and to advise the client of the many disadvantages of proceeding pro se. Such advice should include: the full nature of the charges; the range of punishments; the possible defenses; the role of mitigation prior to and at trial; the complexities involved and the rights and interests at stake;, and the client's capacity to perform the role of defense attorney. Such advice should also include an explanation of the stages of appellate, post-conviction and habeas corpus review of any conviction or sentence, the effect of failing to effectively preserve issues for review and the impact of waiver of counsel on any possible ineffective assistance of counsel claim.

b. if the client maintains an intention or inclination to waive counsel, counsel should immediately inform the capital case coordinator of the client's desire and should request that the capital case coordinator assign independent counsel to advise the client. The capital case coordinator shall immediately assign at least one attorney certified as lead counsel to consult with the defendant and provide independent advice on the exercise of his Sixth Amendment rights. The role of independent counsel in this situation is not to represent the client in the exercise of his Sixth Amendment rights but instead to ensure that the client receives full and independent legal advice before choosing whether to waive his right to counsel.

c. in addition to seeking the assignment of independent counsel, counsel assigned to represent the defendant should immediately commence a thorough investigation into the question of the defendant's competence to waive counsel and whether, in the circumstances, any such waiver would be knowing, voluntary and intelligent. Such an investigation should not be limited to information obtained from interaction with the client but should include a detailed examination of available collateral sources (including documents and witnesses) as well as consultation with relevant experts.

2. Where a client asserts his right to self-representation counsel has an obligation both to investigate the question of the client's competence and the quality of the purported waiver and to bring before the court evidence raising doubts about these matters. Counsel should submit the case for the client's competent, knowing, voluntary and intelligent waiver to full adversarial testing. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way

that ensures that there is meaningful adversarial testing of the question of the waiver of representation by counsel. Counsel remains responsible for the representation of the client until such a time as the court grants the client's motion to proceed pro se and must continue to perform in compliance with the Capital Guidelines and Performance Standards. Where appropriate, counsel should object to a court's ruling accepting a waiver of counsel, should ensure that the issue is preserved for appellate review and should seek interlocutory review of the decision.

3. Where a capital defendant has been permitted to proceed pro se, counsel should move for the appointment of standby counsel and should seek to persuade the defendant to accept the services of standby counsel. The court may appoint stand by counsel over the defendant's objection and counsel should ordinarily accept such an appointment. The court may place constraints on the role of standby counsel and standby counsel should object to any constraints beyond those required by the Sixth Amendment. Where the quality of the defendant's relationship with counsel assigned to represent the defendant is such that his or her ability to serve as standby counsel would be significantly impaired, the Capital Coordinator may assign additional counsel and urge the court to appoint such additional counsel as are assigned to the role of standby counsel.

4. Attorneys acting as standby counsel shall comply with the Guidelines and Performance Standards for capital defense to the extent possible within the limitations of their role as standby counsel. Counsel shall not accept appointment as standby counsel unless certified as lead trial counsel or certified as associate trial counsel where certified lead trial counsel is also appointed. Counsel appointed as standby counsel shall be entitled to be remunerated and to have their expenses met in the same manner and to the same extent as they would if assigned to represent a defendant who was not proceeding pro se.

5 With the defendant's consent, and subject to any prohibition imposed by the court, standby counsel may perform any role in the case that counsel would ordinarily perform whether in front of or in the absence of the jury.

6. In the absence of his consent to do otherwise, a pro se defendant must be allowed to preserve actual control over the case he chooses to present to the jury and is entitled to ensure that the jury's perception that he is representing himself is preserved. Accordingly, a defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial.

7. Where the defendant does not consent to the actions of standby counsel, the permissible conduct of standby counsel is different depending on whether the jury is present, the issue is raised solely before a judge or the action is taken entirely out of court.

a. Where the defendant does not consent to the actions of standby counsel, counsel must not in the presence of the jury make or substantially interfere with any significant tactical decisions, control the questioning of witnesses or speak instead of the defendant on any matter of importance. Participation by counsel to steer a defendant through the basic procedures of trial is, however, permissible. Standby counsel should assist the pro se defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony that the defendant has clearly shown he wishes to complete. Counsel should also assist to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

b. Counsel's participation outside the presence of the jury is far less constrained. Even without the consent of the defendant, counsel may proactively participate in proceedings outside of the presence of the jury as long as the pro se defendant is allowed to address the court freely on his own behalf and disagreements between counsel and the pro se defendant are resolved by the judge in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. Counsel should, in the absence of the jury, take such actions in the case as are consistent with the best interests of the client, including making any objections, and motions as would be consistent with high quality representation of the defendant.

8. Where it appears to standby counsel during the course of the proceedings that the decision to permit the defendant to proceed pro se or any decision to constrain the role of standby counsel should be revisited, counsel should move for reconsideration of those decisions.

9. Without interfering with the defendant's right to present his case in his own way, standby counsel should continue to fully prepare the case in order to be ready to assume responsibility for the representation of the defendant should the court or the defendant reverse the waiver of counsel. Where standby counsel is given or resumes responsibility for the representation of the defendant, counsel should move for all necessary time to prepare a defense for both the guilt and penalty phases of the trial, as appropriate. Where there is reason to believe that the client may re-invoke his right to counsel, the capital coordinator should ensure that a full defense team remains assigned and available to assume the representation.

D. Counsel's Additional Responsibilities when Representing a Foreign National:

1. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals. Unless predecessor counsel has already done so, counsel representing a foreign national should:

a. immediately explain the benefits that the client may obtain through consular assistance;

b. immediately notify the client of the right to correspond with and have access to consular officers from his or her country of nationality via the nearest Consulate;

c. with the permission of the client, contact the nearest Consulate, and inform the relevant consular officials about the client's arrest and/or detention. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the Consulate;

d. where contact is made with the relevant Consulate, counsel should discuss what specific assistance the Consulate may be able to provide to the client in the particular case;

e. research, consider and preserve any legal rights the client may have on account of foreign nationality status; and

f. consider whether the client's foreign accent, dialect or knowledge of English is such that the client requires an interpreter and, if so, take steps to secure one without delay for the duration of proceedings.

2. Where counsel has reason to believe that the client may be a foreign national, counsel should advise the capital case supervisor. Counsel should ensure that the defense team includes adequate expertise and experience in dealing with the defense of foreign nationals in capital cases and where this is not the case should advise the capital case supervisor and seek additional support, including the assigning of additional counsel.

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§1915. Performance Standard 7: Trial

A. Counsel's Duty of Trial Preparation

1. Throughout preparation and trial, counsel should consider the defense case theory and ensure that counsel's decisions and actions are consistent with that theory. Where counsel's decisions or actions are inconsistent with the theory, counsel should assess and understand why this is the case and then either change the conduct or change the theory to accommodate the new approach.

2. Counsel should complete the investigation, discovery, and research in advance of trial, such that counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. Ordinarily, this process should be sufficiently advanced at least 180 days before trial to ensure that issues related to funding, expert witnesses, witness availability, securing witness attendance and accommodation, witness preparation and other trial preparation can proceed in an orderly and well planned fashion.

3. Counsel should not forgo investigation and preparation of a defense on the basis that the prosecution case appears weak or counsel believes that no penalty phase will be required.

4. Preparation for trial should include:

a. causing subpoenas to be issued for all potentially helpful witnesses, and all potentially helpful physical or documentary evidence;

i. counsel should ensure that all subpoenaed witnesses are aware of the correct date and time to appear in court, the action they should take when they appear in response to the subpoena and how to contact counsel if necessary;

ii. counsel should consider utilizing ex parte procedures for the subpoena of persons, documents or things when available;

iii. counsel should follow up on all subpoenas and follow procedures for informing the court of non-compliance and seeking enforcement;

iv. counsel may refrain from issuing subpoenas for particular witnesses based on strong tactical considerations and in the awareness of the waiver of the defendant's rights to compulsory process that this may entail.

b. arranging for defense experts to consult and/or testify on evidentiary issues that are potentially helpful (e.g., testing of physical evidence, opinion testimony, etc.);

i. adequate arrangements for the funding, scheduling and, where necessary, transport and accommodation of expert witnesses should be made.

ii. counsel should prepare with the experts and should be fully aware of the experts' opinions on all relevant matters, including relevant prior testimony, before deciding whether or not to present them at trial.

iii. counsel should determine the extent to which evidence to be addressed by an expert witness may be presented through lay witnesses.

c. ensuring that counsel has obtained, read and incorporated into the defense theory all discovery, results of defense investigation, transcripts from prior or related proceedings and notices, motions and rulings in the case;

d. obtaining photographs and preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information which may assist the fact finder in understanding the defense.

e. ensuring that the facilities at the courthouse will be adequate to meet the needs of the trial and the defense team.

5. Counsel should have available at the time of trial all material relevant to both the guilt and penalty phases that may be necessary or of assistance at trial, including:

a. copies of all relevant documents filed in the case;

b. relevant documents prepared or obtained by investigators;

c. *voir dire* questions, topics or plans;

d. outline or draft of opening statements for both guilt and penalty phases;

e. cross-examination plans for all possible prosecution witnesses;

f. direct examination plans for all prospective defense witnesses;

g. copies of defense subpoenas and proof of service;

h. prior statements and testimony of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements. Counsel should also be prepared to prove the prior statements if required;

i. prior statements of all defense witnesses;

j. reports from defense experts;

k. a list of all defense exhibits, and the witnesses through whom they will be introduced (as well as a contingency plan for having necessary exhibits admitted if, for example, a witness fails to appear);

l. exhibits, including originals and copies of all documentary exhibits;

m. demonstrative materials, charts, overheads, computer presentations or other similar materials intended for use at trial;

n. proposed jury instructions with supporting case citations, and where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions; and,

o. relevant statutes and cases.

6. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the

trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. During case preparation and throughout trial, counsel should identify potential legal issues and the corresponding objections or motions. Counsel should consider when and how to raise those objections or motions. Counsel should also consider how best to respond to objections or motions that could be raised by the prosecution.

7. Counsel should anticipate state objections and possible adverse court rulings that may impact the defense case theory, be prepared to address any such issues and have contingency plans should counsel's efforts be unsuccessful. Counsel should consider in advance of trial and prepare for the possibility of any emergency writ applications which may be filed by either party as well as making arrangements to ensure that the defense team is able to efficiently and effectively litigate any unanticipated emergency writ applications.

8. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant, admissibility of particular items of evidence) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

9. Counsel should advise the client as to suitable courtroom dress and demeanor. Counsel should ensure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the client is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint. Counsel should ensure that steps are taken to avoid prejudice arising from any security measures in the court and object to the use of both visible restraints on the client and any concealed restraints that adversely impact the client physically or psychologically or impair the client's ability to consult freely with counsel.

10. Counsel should plan with the defense team the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences and all required court appearances.

11. Counsel should plan with the defense team for contingencies arising from the absence or unavailability of any team member and the procedure for accessing additional resources for the team whenever required. Lead counsel should ensure that additional resources, including legal, investigative and support personnel, are available and utilized as appropriate immediately prior to and during trial. Lead counsel should ensure that all members of the defense team are fully aware of their role and responsibilities at trial.

12. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon the mitigation presentation and any verdict at the penalty phase if there is a finding of guilt.

13. Counsel shall take necessary steps to ensure full, official recordation of all aspects of the court proceeding including motions, bench conferences in chambers or at sidebar, opening statements, closing arguments, and jury instructions. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

14. Counsel should make a written request for a continuance if he or she determines that the defense is not adequately prepared for trial or otherwise not able to present a high quality defense on the scheduled trial date. Counsel should be prepared to proffer a full justification for the continuance, explaining the incomplete preparation, unavailable witness, prejudice from late disclosure by the state or other reason for the continuance. Counsel should be prepared to demonstrate reasonable diligence in preparing for trial but should request any necessary continuance even where counsel has not shown reasonable diligence. Counsel should avoid prematurely exposing the defense case theory by seeking to make any proffer of the reasons for the continuance on an ex parte and under seal basis.

15. Counsel should take all necessary steps to secure conditions of trial that allow for the provision of high quality representation, that allow the client to participate meaningfully in his own defense and that make adequate accommodations for any special needs the client may have. Such conditions may include the hours of court, the number and length of breaks, particular technological resources, the use of interpreters or other assistants to the client's understanding and communication, the pace of questioning and argument, medical assistance for the client and adequate space in the courtroom for the client's family and supporters.

16. Counsel should attempt to present as much mitigation evidence as possible during the guilt-innocence phase.

B. Jury Selection

1. Preparing for *Voir Dire*

a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire, including the creation of the jury pool from which the venire is selected. Similarly, counsel should be familiar with the law concerning challenges for cause and peremptory challenges and be alert to any potential legal challenges to the law, practice or procedure applied. Counsel should undertake a factual as well as legal investigation of any potential challenges that may be made.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these practices and procedures including any disproportionate impact the practices and procedures may have on the gender or racial makeup of the jury.

c. Counsel should determine whether any special procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Counsel should be mindful that such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.

d. Prior to jury selection, counsel should seek to obtain a prospective juror list and should develop a method for tracking juror seating and selection. Counsel should be aware of available juror information and, where appropriate, should submit a request for a jury questionnaire by a pretrial

motion. In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of defense counsel should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

e. Counsel should develop *voir dire* questions in advance of trial. Counsel should tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case for both guilt and penalty phase. Creative use of *voir dire* can foreshadow crucial, complex, expert, detrimental, or inflammatory evidence, and emphasize the need for impartiality notwithstanding the nature of the offense charged. Effective *voir dire* will lay much of the ground work for the opening statement.

f. *Voir dire* questions should be designed to elicit information about the attitudes and values of individual jurors, which will inform counsel and the client in the exercise of peremptory challenges and challenges for cause. Areas of inquiry should include:

i. attitude towards the death penalty and, in particular, each juror's willingness and capacity to return a verdict of death or life if selected as a juror in the case;

ii. attitudinal bias or prejudice (including those based on race, religion, political beliefs, and sexual preference);

iii. pretrial publicity (including the nature, extent and source of the juror's knowledge, and whether they have learned information that will not be admitted at trial; have discussed what they have read or heard; have heard, formed or expressed opinions on guilt or innocence; and can set such knowledge and opinions aside);

iv. feelings regarding the nature of the offense;

v. juror experience (or that of a close relative) similar to evidence in the case;

vi. experience (or that of a close relative) as a crime victim, witness, or defendant;

vii. amount of weight given to testimony of a police officer (including any experience in law enforcement or relationship with those in law enforcement);

viii. acquaintance with witness, counsel or defendant;

ix. attitudes toward defenses;

x. ability to understand principles of law and willingness to accept the law as given by the court;

xi. prior experience as a juror;

xii. formal qualifications to serve as a juror;

xiii. ability to render an impartial verdict according to the law and the evidence; and

xiv. other areas of inquiry particular to the juror, such as whether a bilingual juror is willing to abide by the translator's version of the testimony, or whether a hearing impaired juror will refrain from reading lips of parties having private conversations unintended for the jurors' perception.

g. Among the other purposes *voir dire* questions should be designed to serve are the following:

i. to convey to the panel legal principles which are important to the defense case and to determine the jurors' attitudes toward those legal principles (especially where there is some indication that particular legal principles may not be favored or understood by the population in general or where a principle is peculiarly based on specific facts of the case);

ii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iii. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

iv. to establish a relationship with the jury. Counsel should be aware that jurors will develop impressions of counsel and the defendant, and should recognize the importance of creating a favorable impression.

h. Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

i. Counsel should be familiar with the law concerning challenges for cause and peremptory challenges. *Voir dire* should be responsive to this legal framework and designed to ensure that any basis for a cause challenge is adequately disclosed by the questions and answers.

j. Counsel should be aware of the waiver of judicial review of any cause challenge denied by the trial court where the defense does not exhaust its peremptory challenges. Counsel should create an appropriate record in the trial court where peremptory challenges are exhausted without the defense successfully removing all jurors against whom an unsuccessful challenge for cause had been made.

k. Where appropriate, counsel should consider seeking expert assistance in the jury selection process. Recognizing the scope of the task of adequately recording all relevant information during the *voir dire* process, lead counsel should ensure that the team has secured adequate resources, in the form of additional personnel or equipment, to adequately perform this task.

2. Examination of the Prospective Jurors

a. Counsel should personally *voir dire* the panel

b. If the court denies counsel's request to ask questions during *voir dire* that are significant or necessary to the defense of the case, counsel should take all steps necessary to protect the *voir dire* record for judicial review including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

c. Counsel should consider requesting individual, sequestered *voir dire*, particularly in cases where the *voir dire* will canvas sensitive or potentially prejudicial subjects, for example, personal experiences of jurors of abuse, prior exposure to media coverage of the case and knowledge of the case. If particular *voir dire* questions may elicit sensitive or prejudicial answers, counsel should consider requesting that those parts of the questioning be conducted outside the presence of the other jurors. Counsel may also consider requesting that the court, rather than counsel, conduct the *voir dire* as to sensitive questions.

d. In a group *voir dire*, counsel should take care when asking questions which may elicit responses capable of prejudicing other prospective jurors. Counsel should design both questions and questioning style in group *voir dire* to elicit responses in a way that will minimize any

negative effect and maximize any favorable effect on other prospective jurors having regard to counsel's objectives in *voir dire*.

e. When asking questions for the purpose of eliciting information from a juror, counsel should usually phrase questions in an open-ended fashion that elicits substantive responses, rather than allowing the juror to respond by silence or with a simple yes or no.

f. Counsel should ensure that the record reflects all answers of all jurors to all questions asked. Counsel should ensure that the record clearly reflects which juror in a panel is being asked a particular question and which gives a particular answer. Where questions are asked of an entire panel or non-verbal responses are given, counsel should ensure that the record accurately reflects all of the responses given and which jurors gave those responses.

g. Counsel should ensure that other members of the defense team are making detailed notes of the responses of individual jurors, the responses of venire panels to more generally directed questions and the demeanor and reactions of members of the venire.

3. Death Qualification

a. Counsel should be intimately familiar with the constitutional, statutory and case law relating to questioning and challenging of potential jurors as they relate to "death qualification."

b. Counsel should apply techniques of *voir dire* designed to overcome the tendency of the process of death qualification to undermine the presumption of innocence and increase the perception of death as the appropriate penalty.

c. Counsel should ensure that an individual inquiry is made of each juror as to his or her views on the death penalty;

d. Counsel should apply techniques of *voir dire* designed to ensure that the view each juror expresses regarding the death penalty:

i. is pertinent to the situation the juror will face in penalty phase (e.g. after hearing all the evidence, full deliberation and a unanimous determination of guilt beyond reasonable doubt);

ii. is in the context of a finding of guilt of first degree murder having regard to the aggravator(s) in the case (e.g. specific intent to kill or cause great bodily harm to a child under 12); and

iii. is not obscured by consideration of any lawful defense or justification that will necessarily have been rejected by penalty phase (e.g. the killing was not in self-defense, he knew the difference between right and wrong, he was not in a sudden passion or heat of blood);

e. Counsel should determine the extent to which each juror could give meaningful consideration to mitigating circumstances, having particular regard to those circumstances defined as mitigating in the statute and the caselaw.

f. Counsel should determine the extent to which a juror's views on the death penalty or mitigation may substantially impair his or her ability to make an impartial decision at guilt or return a life verdict. Counsel may consider exploring factors such as the strength of the juror's views on the death penalty, the origin of those views, how long they have been held and whether the juror has discussed those views with others.

g. Counsel should apply techniques of *voir dire* designed to insulate jurors who are to be challenged for cause against rehabilitation based, in particular, upon their stated willingness to follow the law;

h. Counsel should mount a challenge for cause in all cases where there is a reasonable argument that the juror's views on the death penalty or mitigation would prevent or substantially impair the performance of the juror's duties in accordance with the instructions or the oath.

i. Counsel should apply techniques of *voir dire* designed to rehabilitate jurors who have expressed scruples against the infliction of capital punishment.

j. Counsel should apply techniques of *voir dire* designed to ensure that each prospective juror understands and accepts:

i. that each juror is entitled to their own opinion and vote and so each juror must individually decide whether the client is sentenced to life or death following a penalty phase;

ii. that while the juror must deliberate, the juror's opinion is not subject to negotiation or compromise and is free from criticism by or explanation to the judge, the prosecutor or others;

iii. that each juror can give life for whatever reason he or she wishes;

iv. that each juror is entitled to the assistance of the court in having his or her opinion respected; and

v. the procedures for bringing penalty phase deliberations to an end and the effect of a hung jury at penalty phase.

k. Counsel should consider exercising peremptory challenges solely or principally on the assessment of each juror's attitude to the death penalty and mitigation.

l. Counsel should document and, where appropriate litigate the effect of death qualification on the representativeness of the qualified jury venire.

4. Other challenges for Cause and Peremptory Challenges

a. Counsel should challenge for cause all prospective jurors against whom a legitimate challenge can be made when it is likely to benefit the client.

b. When a challenge for cause is denied, counsel should consider exercising a peremptory challenge to remove the juror.

c. In exercising challenges for cause and peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available to the state and the defense. In making this decision counsel should be mindful of the law requiring counsel to use one of his or her remaining peremptory challenges curatively to remove a juror upon whom counsel was denied a cause challenge or waive the complaint on appeal, even where counsel ultimately exhausts all peremptory challenges.

d. Counsel should timely object to and preserve for appellate review all issues relating to the unconstitutional exclusion of jurors by the prosecutor or the court.

e. Counsel should request additional peremptory challenges where appropriate in the circumstances present in the case.

5. Unconstitutional Exclusion of Jurors

a. In preparation for trial, during *voir dire* and at jury selection, the defense team should gather and record all information relevant to a challenge to the state's use of peremptory strikes based in part or in whole on race, gender or any other impermissible consideration. This will include: the race and gender of the venire, the panel, the petit jury and the jurors struck for cause and peremptorily; any disparity in questioning style between jurors; a comparative analysis of the treatment of similarly placed jurors; non-verbal conduct of potential jurors; historical evidence of policy, practice or a pattern of discriminatory strikes; and, other evidence of discriminatory intent. Such material should be advanced in support of any challenge to the exercise of a state peremptory strike where available and appropriate in the circumstances. Counsel should ensure that the record reflects the racial and gender composition of the jury pool, the venire, each panel, the peremptory challenges made by both parties, and of the petit jury. The record should also reflect the race and gender of the defendant, the victim(s) and potential witnesses, and any motivation the state may have to have regard to race or gender in exercising peremptory challenges. Counsel should also ensure that, where necessary the record reflects non-verbal conduct by jurors such as demeanor, tone and appearance.

b. Where evidence of the discriminatory use of peremptory strikes, including evidence of the presence of a motive for discriminatory use of peremptory strikes emerges after the jury is sworn, counsel should make or reurge any earlier objection to the state's strikes.

c. Counsel should not exercise a peremptory strike on the basis of race, gender or any other impermissible consideration and should maintain sufficient contemporaneous notes to allow reasons for particular peremptory strikes to be proffered if required by the court.

6. *Voir Dire* After the Jury has been Impanelled

a. Counsel should consider requesting additional *voir dire* whenever potentially prejudicial events occur, for instance, when jurors are exposed to publicity during the trial, jurors have had conversations with counsel or court officials, jurors learn inadmissible evidence, it is revealed that jurors responded incorrectly during *voir dire*, or jurors otherwise violated the court's instructions.

b. Counsel should be diligent and creative in framing questions that not only probe the particular issue, but also avoid creating or increasing any prejudice. Counsel should consider requesting curative instructions, seating alternate jurors, a mistrial, or other corrective measures.

c. If the verdict has already been rendered, counsel should request a post-trial hearing and an opportunity to examine jurors within the scope permitted by law.

C. Objection to Error and Preservation of Issues for Post Judgment Review

1. Counsel should be prepared to make all appropriate evidentiary objections and offers of proof, and should vigorously contest the state's evidence and argument through objections, cross-examination of witnesses, presentation of impeachment evidence and rebuttal. Counsel should be alert for, object to, and make sure the record adequately reflects instances of prosecutorial misconduct.

2. Counsel should make timely objections whenever a claim for relief exists under the law at present or under a good faith argument for the extension, modification or reversal of existing law unless sound tactical reasons exist for not doing so. There should be a strong presumption in favor of making all available objections and any decision not to object should be made in the full awareness that this may constitute an irrevocable waiver of the client's rights.

3. Where appropriate, objections should include motions for mistrial and/or admonishments to ignore or limit the effect of evidence. Counsel should seek an evidentiary hearing where further development of the record in support of an objection would advance the client's interests. Areas in which counsel should be prepared to object include:

a. the admissibility or exclusion of evidence and the use to which evidence may be put;

b. the form or content of prosecution questioning, including during voir dire;

c. improper exercises of prosecutorial or judicial authority, such as racially motivated peremptory challenges or judicial questioning of witnesses that passes beyond the neutral judicial role and places the judge in the role of advocate;

d. the form or content of prosecution argument, including the scope of rebuttal argument;

e. jury instructions and verdict forms; and

f. any structural defects.

4. Counsel should ensure that all objections are made on the record and comply with the formal requirements applicable in the circumstances for making an effective objection and preserving a claim for subsequent review. These formal requirements may relate to a range of considerations, including: timing of the objection; whether an objection is oral or written; the need to proffer excluded testimony or questions; requesting admonishment of the jury; requesting a mistrial; exhausting peremptory challenges; providing notice to the Attorney-General; and, the specific content of the objection. In addition to the objection itself, counsel should ensure that information relevant to potential review is preserved in the record, i.e., that the transcript, the court file, or the exhibits preserved for review include all the information about the events in the trial court that a reviewing court might need to rule in the client's favor.

5. Before trial, counsel should ascertain the particular judge's procedures for objections. If the judge orders that counsel not state the grounds for the objection in the jury's presence, or if the reasons for the objection require explanation or risk prejudicing the jury, counsel should request permission to make the objection out of the hearing of the jury, for example, by approaching the bench. Counsel should ensure that any objection and ruling is made on the record and where this is not possible at a bench conference, should request another procedure for making objections, such as having objections handled in chambers in the presence of the court reporter. Where, despite counsel's efforts, objections are made or rulings announced in the absence of the court reporter, counsel should ensure that those objections and rulings are subsequently placed on the record in as full a detail as possible

6. Where an objection is made, counsel should state the specific grounds of objection and be prepared to fully explain and argue all bases of the objection. Where a claim for relief exists based on constitutional grounds, counsel

should ensure that the record reflects that the objection is brought on those constitutional grounds. Counsel should be particularly careful to ensure that the record reflects the federal nature of any objection based in federal constitutional law or any other federal law.

7. Counsel's arguments to the court should explain both why the law is in the client's favor and why the ruling matters. Arguments should be precise; objections should be timely, clear and specific. For example:

a. if the court excludes evidence, counsel should proffer what the evidence would be, why it is important to the defense, and how its exclusion would harm the defense.

b. if the court limits cross-examination, counsel should proffer what counsel was attempting to elicit and why it is important.

c. if the court admits evidence over defense objection, counsel should, where appropriate, move for a limiting instruction.

d. if the court rules inadmissible prejudicial evidence already placed before the jury, counsel should seek a mistrial and/or an admonishment, as appropriate.

8. Counsel should not refrain from making objections simply because they are unsure of the precise legal principle or case name to invoke. In these situations, counsel should explain the client's position in factual terms, explaining why a certain ruling under specified facts is prejudicial to the client.

9. Counsel should not rely on objections made by co-defendant's counsel unless the judge has made clear that an objection on behalf of one defendant counts as an objection for all defendants. Even in that situation, counsel may want to identify specific prejudice that would befall her client if the court ruled adversely.

10. Counsel should take care not to appear to acquiesce in adverse rulings, by, for example, ending the discussion with comments intended to reflect politeness (e.g. "Thank you, Your Honor") but which may appear in the transcript as an abandonment of counsel's earlier objection and agreement with the trial court's rationale. Accordingly, counsel should find ways to be polite while making clear that the objection has not been abandoned.

11. Counsel should insist on adequate methods for recording demonstrative evidence. For example, diagrams should be drawn on paper instead of blackboards, and demonstrations not amenable to verbal descriptions should be videotaped. Requests for preservation of exhibits and diagrams should be made in a timely manner. Counsel should make sure that all references to exhibits contain the exhibit number.

12. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and accurate and to supplement or correct it as appropriate.

13. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

D. Opening Statement

1. Counsel should make an opening statement.

2. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, including law enforcement, unless a strategic reason exists for not doing so.

3. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's practice regarding the permissible content of an opening statement.

4. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement. For example, if the evidence that the defense might present depends on evidence to be introduced in the state's case, counsel should avoid making promises of what evidence it will present because counsel may decide not to present that evidence. Counsel should not discuss in the opening statement the defense strategy with the jury to the extent that later defense decisions, such as putting the client or particular defense witnesses on the stand can be interpreted as concessions of the prosecution meeting its burden, or of weakness of the defense case. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

5. Before the opening statement, counsel should be familiar with the names of all witnesses and the crucial dates, times and places, and should have mastered each witness's testimony so that favorable portions can be highlighted. If the complainant and defendant know each other, counsel should consider discussing their relationship and previous activities to create a context for the alleged offense. Counsel may wish to disclose defense witnesses' impeachable convictions, only if counsel is certain that the witnesses will testify. Where evidence is likely to be ruled inadmissible, counsel should refer to it only after obtaining a ruling from the court.

6. Counsel's objectives in making an opening statement may include the following:

a. to provide an overview of the defense case, introduce the theory of the defense, and explain the evidence the defense will present to minimize prejudice from the government case;

b. to identify the weaknesses of the prosecution's case, point out facts that are favorable to the defense that the government omitted in its opening, create immediate skepticism about the direct testimony of government witnesses and make the purpose of counsel's cross-examination more understandable;

c. to emphasize the prosecution's burden of proof;

d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case and to present explanations for government witnesses' testimony, i.e. bias, lack of ability to observe, intoxication and *Giglio* evidence;

e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

f. to clarify the jurors' responsibilities;

g. to point out alternative inferences from circumstantial evidence arising from either the government's case or evidence the defense will present, and to state the ultimate inferences which counsel wishes the jury to draw;

h. to establish counsel's credibility with the jury;

i. to personalize and humanize the client and counsel for the jury; and

j. to prepare the jury for the client's testimony or decision not to testify.

7. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement or the defense summation. Counsel should keep close account of what is proffered. Variances between the opening statement and the evidence may necessitate a mistrial, a cautionary instruction, or prove to be a fruitful ground for closing argument.

8. Whenever the prosecutor oversteps the bounds of proper opening statement (by, for example, referencing prejudicial material or other matters of questionable admissibility and assertions of fact that the government will not be able to prove), counsel should object, requesting a mistrial, or seeking cautionary instructions, unless clear tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

a. the significance of the prosecutor's error;

b. the possibility that an objection might enhance the significance of the information in the jury's mind, or negatively impact the jury; and

c. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

9. Improper statements that counsel should consider objecting to may include:

a. attempts to arouse undue sympathy for the victim of a crime or put the jurors in the shoes of the victim;

b. appeals to the passions and prejudices of the jurors;

c. evidence of other crimes;

d. defendant's prior record;

e. reciting evidence at great length or in undue detail;

f. personal evaluation of the case or of any state's witness;

g. argument on the merits of the case or the pertinent law; and

h. defendant's possible failure to testify on present evidence.

E. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof. Counsel should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems and, where appropriate, challenge its admissibility and/or present other evidence that would controvert the state's evidence. Counsel should make all appropriate challenges to improper testimony. Counsel should challenge improper bolstering of state witnesses.

2. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. If a fact or facts to be stipulated are harmful to the client but there is still an advantage to stipulating, counsel should make certain that the stipulation is true before consenting to a stipulation. While there may be strategic reasons to forgo cross-examination of particular witnesses or objections to evidence, counsel should make sure to subject the state's case to vigorous adversarial testing.

3. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

4. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense and closing argument;

b. consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary, might elicit responses harmful to the defense case or might open the door to damaging and otherwise improper redirect examination.

c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;\

d. prepare a cross-examination plan for each of the anticipated witnesses;

e. be alert to inconsistencies, variations and contradictions in a witness' testimony;

f. be alert to possible inconsistencies, variations and contradictions between different witnesses' testimony;

g. be alert to significant omission or deficiencies in the testimony of any witnesses;

h. review and organize all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

i. have prepared a transcript of all audio or video tape recorded statements made by the witness;

j. where appropriate, review relevant statutes and local law enforcement policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining law enforcement witnesses;

k. be alert to and raise where appropriate issues relating to witness competency and credibility, including bias and motive for testifying, evidence of collaboration between witnesses, innate physical ability to perceive, external impediments to the witness' perception, psychological hindrances to accurate perception, and faulty memory;

l. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness;

m. be alert to potential Fifth Amendment and other privileges that may apply to any witness;

n. elicit all available evidence to support the theory of defense; and

o. prepare a memorandum of law in support of the propriety of any line of impeachment likely to be challenged.

5. Counsel should consider conducting a *voir dire* examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections. Counsel should not stipulate to the admission of expert testimony that counsel knows will be harmful to the defense where there exists a viable claim regarding its admissibility. Counsel should be alert to frequently encountered competency issues such as: age

(chronological and developmental), taint of witness' ability to recall events by external factors such as suggestion, mental disability due to drug or alcohol abuse, and mental illness.

6. Before trial, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses to the extent required by the law. If disclosure was not properly made counsel should consider requesting relief as appropriate including:

a. adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a recess or continuance if necessary;

b. exclusion of the witness' testimony and all evidence affected by that testimony;

c. a mistrial;

d. dismissal of the case; and/or

e. any other sanctions counsel believes would remedy the violation.

7. Counsel should attempt to mitigate the prejudicial impact of physical evidence where possible by: attempting to stipulate to facts that the government seeks to establish through prejudicial evidence, moving to redact irrelevant and unduly prejudicial information from documents, recordings and transcripts, and/or asking the court to exclude part of the proposed evidence as unnecessarily cumulative. Where prejudicial physical evidence will be admitted, counsel should seek to lessen its prejudice by seeking restrictions on the form of the evidence (e.g. size of photographs, black and white, rather than color), the manner of presentation of the evidence and to bar undue emphasis or repetitive presentation of the evidence. Similarly, where necessary, counsel should object to the exclusion or redaction of exculpatory portions of evidence.

8. Counsel should become familiar with all areas in which expert evidence may be offered and should develop a strong knowledge of all forensic fields involved in the case with the assistance of experts as appropriate.

F. Presenting the Defendant's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. Counsel should prepare for the need to adapt the defense strategy during trial where necessary. In extreme cases where a defense theory is no longer tenable, counsel should abandon that theory rather than losing all credibility with the jury, and proceed to emphasize the available defense evidence which supports another theory of defense. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Even where no affirmative defense to guilt is mounted, counsel must be conscious of the potential for the case to proceed to penalty phase and should ensure that the guilt phase is conducted in a way that supports and extracts any available advantages in the guilt phase for the penalty phase presentation. Counsel should be conscious of the perils of a denial defense and the likely negative effect such a defense will have should the case proceed to penalty phase.

2. Counsel should not put on a non-viable defense but at the same time, even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt.

3. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify, including but not limited to, the client's constitutional right to testify, his or her right to not testify, the nature of the defense, the client's likely effectiveness as a witness on direct and under cross-examination, the client's susceptibility to impeachment with prior convictions, bad acts, out-of-court statements or evidence that has been suppressed, the client's demeanor and temperament, and the availability of other defense or rebuttal evidence. Counsel should give special consideration to the likely impact of the client's testimony on any defenses and any possible mitigation presentation, particularly where questions of mental health and mental capacity are in issue. Counsel shall recommend the decision which counsel believes to be in the client's best interest. The ultimate decision whether to testify is the client's. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. The client should be called to testify in a capital case only in rare circumstances, however, counsel should prepare for the possibility that the client's testimony may become essential to the defense case. Therefore, the client should be thoroughly prepared for both direct and cross-examination before trial. Counsel should familiarize the client with all prior statements and exhibits, and review appropriate demeanor for taking the stand. Counsel should be respectful of the client when conducting the direct examination, eliciting testimony that will be helpful to the client's defense. Counsel should avoid unnecessary direct examination that opens the door to damaging cross examination.

4. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production. Counsel should be familiar with the notice requirements for affirmative defenses and introduction of expert testimony.

5. In preparing for presentation of a defense case, counsel should, where appropriate:

a. consider all potential evidence which could corroborate the defense case, and the import of any evidence which is missing;

b. after discussion with the client, make the decision whether to call any witnesses and, if calling witnesses, decide which witnesses will provide the most compelling evidence of the client's defense. In making this decision, counsel should consider that credibility issues with particular witnesses can be overcome when several witnesses testify to the same facts. Counsel should not call witnesses who will be damaging to the defense.

c. develop a plan for direct examination of each potential defense witness;

d. determine the implications that the order of witnesses may have on the defense case;

e. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

f. consider the possible use and careful preparation of character witnesses, and any negative consequences that may flow from such testimony;

g. consider the need for, and availability of, expert witnesses, especially to rebut any expert opinions offered by the prosecution, and what evidence must be submitted to lay the foundation for the expert's testimony;

h. consider and prepare for the need to call a defense investigator as a witness;

i. review all documentary evidence that must be presented;

j. review all tangible evidence that must be presented;

k. consider using demonstrative evidence (and the witnesses necessary to admit such evidence); and

l. consider the order of exhibit presentation and, if appropriate, with leave of court prior to trial, label each exhibit.

6. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

7. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor, and procedures including sequestration.

8. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence. Counsel should plan for the contingency that particular items of evidence may be ruled inadmissible and prepare for alternative means by which the evidence, or similar evidence, can be offered. Similarly, counsel should have contingency plans for adjusting the defense case theory where important evidence may be ruled inadmissible. Counsel should not seek to have excluded prosecution evidence that is helpful to the defense.

9. Counsel should conduct a direct examination that follows the rules of evidence, effectively presents the defense theory, and anticipates/defuses potential weak points.

10. If a prosecution objection is sustained or defense evidence is improperly excluded, counsel should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.

11. Counsel should object to improper cross-examination by the prosecution.

12. Counsel should conduct redirect examination as appropriate.

13. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

14. Counsel should keep a record of all exhibits identified or admitted.

15. If a witness does not appear, counsel should request a recess or continuance in order to give counsel a reasonable amount of time to locate and produce the witness. Counsel should request any available relief if the witness does not appear.

16. Understanding that capital jurors frequently determine the applicable punishment prior to penalty phase and that the jury in penalty phase will be permitted to rely upon all evidence introduced in the guilt phase, counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment.

G. Preparation of the Closing Argument

1. Counsel should make a closing argument.

2. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

3. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

4. Well before trial, counsel should plan the themes, content, and organization of the summation. The basic argument should be formulated before the first juror is sworn, with accurate notes taken throughout the trial to permit incorporation of the developments at trial. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in pursuit of the defense theory of the case and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case, including what potential corroborative evidence is missing, especially in light of the prosecution's burden of proof;

b. describing favorable inferences to be drawn from the evidence;

c. incorporating into the argument:

i. the theory of the defense case;

ii. helpful testimony from direct and cross-examinations;

iii. verbatim instructions drawn from the expected jury charge;

iv. responses to anticipated prosecution arguments;

v. the promises of proof the prosecutor made to the jury during the opening statement; and

vi. visual aids and exhibits;

d. the effect of the defense argument on the prosecutor's rebuttal argument.

5. Counsel should not demean or disparage or be openly hostile towards the client.

6. Whenever the prosecutor exceeds the scope of permissible argument or rebuttal, counsel should object, request a mistrial, or seek a cautionary instruction unless strong tactical considerations suggest otherwise.

H. Jury Instructions and Verdict

1. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

2. Counsel should always submit proposed jury instructions in writing.

3. Counsel should review the court's proposed jury charge and any special written charge proposed by the state and, where appropriate, counsel should submit special written charges which present the applicable law in the manner most favorable to the defense in light of the particular circumstances of the case, including the

desirability of seeking a verdict on a lesser included offense.

4. Where possible, counsel should provide citations to statute and case law in support of any proposed charge. Counsel should endeavor to ensure that all jury charge discussions are on the record or, at the very least, that all objections and rulings are reflected in the record.

5. Where appropriate, counsel should object to and argue against any improper charge proposed by the prosecution or the court.

6. If the court refuses to adopt a charge requested by counsel, or gives a charge over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of any proposed special written charge is included in the record.

7. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request an additional or curative charge.

8. If there are grounds for objecting to any aspect of the charge, counsel should seek to object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.

9. If the court proposes giving a further or supplemental charge to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge provide a copy of the proposed charge to counsel before it is delivered to the jury. Counsel should be present for any further charge of the jury and should renew or make new objections as appropriate to any further charge given to the jurors after the jurors have begun their deliberations. Counsel should object to any charge which expressly or implicitly threatens to keep the jury sequestered indefinitely until a verdict is reached or is otherwise improperly coercive, for example, by omitting the caution to jurors that they should not abandon their deeply held beliefs.

10. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

11. Upon a finding of guilt, counsel should be alert to any improprieties in the verdict and should request the court to poll the jury. In a multi-count indictment, defense counsel normally should request a poll as to each count on which the jury has convicted.

I. The Defense Case Concerning Penalty

1. Preparation for the sentencing phase should begin immediately upon counsel’s entry into the case. Counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation, explains the offense, or rebuts the prosecution’s case in aggravation. Counsel should not forgo investigating or presenting mitigation in favor of a strategy of relying only on residual doubt or sympathy and mercy. Counsel should exercise great caution in seeking to rely upon residual doubt as to the defendant’s guilt.

2. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt phase.

3. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.

4. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the jury, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution’s case in aggravation.

5. As with the guilt phase, counsel should consider and discuss with the client, the advisability and possible consequences of the client testifying in the penalty phase.

6. Counsel should present to the jury all reasonably available evidence in mitigation unless there are strong strategic reasons to forgo some portion of such evidence. Counsel should make every effort to find a way to successfully present all of the mitigating evidence rather than to abandon a piece or pieces of mitigating evidence due to potential negatives arising from the evidence. Counsel should not make agreements with the prosecution whereby the defense agrees to put on little or no mitigation evidence.

7. Counsel should present mitigating evidence in an organized and coherent fashion, especially when it is of a complex nature involving expert testimony. Counsel should seek to present a narrative of the client’s life story that serves to humanize the client and offers a cohesive theory for life rather than presenting each mitigating circumstance as separate and distinct from each other. Counsel should seek to illustrate the ways different pieces of mitigation evidence interrelate to ensure a comprehensive picture of the client’s life and the mitigation case is produced. Counsel should consider the need to utilize an expert witness to synthesize or explain various and/or divergent elements of a mitigation presentation. However, counsel should be conscious of the desirability of presenting such evidence through lay witnesses, rather than relying too heavily upon expert testimony. Counsel should present all mitigating evidence in such a way that it maintains the defense theory of the case, and should avoid presenting or opening the door to evidence that undermines the defense theory.

8. In developing and advancing the defense theory of the case in the penalty phase, counsel should seek to integrate the defense theories at guilt and penalty phase into a complimentary whole or, where this is not possible, seek to minimize any discordance between the defense theories in guilt and penalty phase.

9. In deciding the defense theory in the penalty phase and which witnesses, evidence and arguments to prepare, counsel must exercise a high degree of skill and care as an advocate to determine the most persuasive course to adopt in the circumstances of each particular case. Counsel should consider evidence and arguments that would: be explanatory of the offense(s) for which the client is being sentenced; reduce the client’s moral culpability for the offense; demonstrate the client’s capacity for rehabilitation or adaptation to prison; demonstrate the client’s remorse; rebut or explain evidence presented by the prosecutor; present positive aspects of the client and the client’s life; humanize the client; engender sympathy or empathy in the jury,; or would otherwise support a sentence less than death. Counsel should always consider and seek to address the likely concern the jury has regarding the possibility that the client will represent a future danger if sentenced to life imprisonment, rather than death.

10. The witnesses and evidence that counsel should prepare and consider for presentation in the penalty phase include:

a. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death

b. expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation, or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor. Supporting documentation should be read, organized, evaluated and condensed to a form that is most conducive to explaining to the jury how and why this mitigation is relevant.;

c. Witnesses who can testify about the effect of a sentence of life imprisonment and/or the conditions under which a sentence of life imprisonment would be served;

d. witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones;

e. demonstrative evidence, such as photos, videos, physical objects and documents that humanize the client, portray him positively or add emphasis to an aspect of the testimony of a witness or witnesses.

f. witnesses drawn from the victim's family or intimates who are able to offer evidence that may support an argument for a sentence other than death.

11. Among topics counsel should consider presenting through evidence and argument are:

a. positive character evidence and evidence of specific positive acts, including evidence of positive relationships with others, contributions to individuals and the community, growth and progress over his life and since arrest, adaptation to incarceration, prospects for rehabilitation during a life sentence and reputation evidence.

b. family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);

c. medical and mental health history (including hospitalizations, mental and physical illness or injury, trauma, intellectual impairment, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage). Evidence relating to medical and mental health matters should normally include the symptoms and effect of any illness rather than just solely presenting a formal diagnosis;

d. educational history (including achievement, performance, behavior, and activities), special educational needs (including mental retardation, cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;

e. military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);

f. employment and training history (including skills and performance, and barriers to employability);

g. record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses;

h. prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services); and

i. a prior relationship between the client and the victim(s) which might help to explain the offense.

12. In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case could be damaging in and of itself or will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

13. Trial counsel should determine at the earliest possible time what aggravating circumstances the prosecution will rely upon in the penalty phase, any adjudicated or unadjudicated wrongful acts the prosecution intends to prove and the nature and scope of any victim impact evidence the prosecution may present. Counsel at all stages of the case should object to any non-compliance with the rules of discovery and applicable case law in this respect and challenge the adequacy of those rules.

14. Counsel at all stages of the case should carefully consider whether all or part of the evidence the state may seek to call in the penalty phase may appropriately be challenged as improper, unduly prejudicial, misleading or not legally admissible. Counsel should challenge the admissibility of evidence brought in support of an aggravating circumstance that cannot legally be established in the circumstances of the case. Counsel should investigate and present evidence that specifically undermines or mitigates the aggravating circumstances and any other adverse evidence to be presented by the prosecution.

15. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

a. carefully consider

i. what legal challenges may appropriately be made to the interview or the conditions surrounding it, and

ii. the legal and strategic issues implicated by the client's co-operation or non-cooperation;

b. ensure that the client understands the significance of any statements made during such an interview, including the possible impact on the sentence and later potential

proceedings (such as appeal, subsequent retrial or resentencing), and

c. attend the interview, unless prevented by court order.

16. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not a suitable punishment for their particular client.

17. Counsel should make an opening statement.

18. In closing argument, counsel should be specific to the client and should, after outlining the compelling mitigating evidence, explain to the jury the significance of the mitigation presented. Counsel's closing argument should be more than a general attack on capital punishment and should not minimize the jury's verdict. Counsel should never ask, instruct, or give permission to the jury to return a death sentence, but rather should appeal to the jury for, and provide reasons for, a life sentence. Counsel's closing argument should not be contradictory. Counsel should not demean, disparage, be hostile towards, or make inappropriate comparisons regarding the client.

19. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1917. Performance Standard 8: Post-Verdict Motions and Formal Sentencing

A. Motion for a New Trial and Other Post-Verdict Motions

1. Counsel should be familiar with the procedures and availability of motions for new trial, for arrest of judgment and for a post-verdict judgment of acquittal, including the time period for filing such motions, the formal requirements of each motion, the evidentiary rules applicable to each motion and the grounds that can be raised.

2. A motion for new trial should be filed in each case where a death verdict is returned by the jury. A motion in arrest of judgment or for a post-verdict judgment of acquittal should be filed in each case in which there exists a colorable basis for the relief sought to be granted.

3. In preparing the motion for new trial, counsel should conduct an intensive and thorough investigation designed to identify and develop: evidence of prejudice arising from any adverse rulings of the trial court; evidence not discovered during the trial that would likely have changed the verdict at either guilt or penalty phase; evidence of prejudicial error or defect not discovered before the verdict or judgment; and, evidence that would otherwise support an argument that the ends of justice would be served by the granting of a new trial.

4. Counsel should utilize all of the investigative tools described in these standards in conducting the investigation, including the use of fact investigators, mitigation specialists, experts, record requests, discovery requests, compulsory process and motions practice.

5. Recognizing that the post-verdict litigation represents a critical stage of proceedings that requires extensive investigation and development of potentially dispositive claims:

a. counsel should seek a postponement of formal sentencing for a sufficient period to allow adequate investigation and development of the motion for new trial or other post-verdict motions; and

b. counsel should seek additional resources sufficient to allow adequate investigation and development of the motion for new trial or other post-verdict motions.

6. In preparing and presenting claims in post-verdict motions, counsel should have particular regard to the need to fully plead the claims and their factual basis in a manner that will preserve the claims for subsequent review. Counsel should request an evidentiary hearing on the motion for new trial in order to present new evidence and preserve claims for appeal.

7. Counsel should prepare post-verdict motions urging that the death penalty is not a legally permissible penalty in the circumstances of the case, including that the death penalty would be constitutionally excessive, where such an arguments are available under existing law, or under a good faith argument for the extension, modification, or reversal of existing law.

8. Counsel should review the court record and ensure that it is complete and that matters relevant to any future review of the case are contained in the record including, for instance, race and gender of jurors in the venire, juror questionnaires, jury questions during deliberations, and all defense proffers appropriate to preserve any defense objections for review.

9. Following formal sentencing, counsel shall continue to conduct an intensive investigation designed to identify and develop evidence not discovered during the trial that would likely have changed the verdict at either guilt or penalty phase in order that any available motion for new trial may be filed within one year of the verdict or judgment of the trial court.

B. Preparation for Formal Sentencing, the Sentence Investigation Report and the Uniform Capital Sentencing Report

1. In preparing for sentencing, counsel should:

a. inform the client of the sentencing procedure, its consequences and the next steps in the client's case, including any expected change in the client's representation;

b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

c. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any statement may have upon the sentence to be imposed, any appeal or review, subsequent retrial or trial on other offenses;

d. become familiar with the procedures governing preparation, submission, and verification of the sentence investigation report and uniform capital sentencing report. In addition, counsel should:

i. consider providing to the report preparer information favorable to the client;

ii. consider whether the client should speak with the person preparing the report; if the decision is made that the client not speak to the report preparer, the client should

be advised to exercise his rights to silence and the presence of counsel and the report preparer should be advised that the client is asserting his right not to participate in an interview. If the determination is made for the client to speak to the report preparer, counsel should discuss the interview in advance with the client and attend the interview.

iii. obtain a copy of the sentence investigation report and uniform capital sentencing report, once completed. Review the completed reports and discuss their contents with the client.

iv. File a written opposition to the factual contents of the reports where appropriate and seek a contradictory hearing.

C. Obligations of Counsel at Sentencing Hearing and Following Sentencing

1. Understanding that the formal imposition of a death sentence following a jury's death verdict is neither automatic, nor inevitable, counsel should actively advocate for a disposition other than the imposition of a death sentence. Such advocacy should include presenting to the court evidence and argument in favor of any categorical bar to the imposition of the death penalty and in support of an argument that the death penalty, in the circumstances of the particular case, is unconstitutionally excessive. Counsel's presentation should not be limited to existing law but should include all good faith arguments for an extension, modification or reversal of existing law.

2. Following the imposition of a death sentence, counsel should prepare and file a motionfor reconsideration of sentence.

3. Upon denial of a motion for reconsideration, counsel should timely file a motion for appeal, including a comprehensive request for transcription of the proceedings and designation of the record as follows:

a. The minutes of all of the proceedings connected with the case;

b. The indictment and any and all proceedings concerning the appointment and/or selection of the grand jury;

c. The transcript of arraignment;

d. The transcript of all pre-trial proceedings regardless of whether defense counsel and the defendant were present;

e. The transcript of any proceeding in which allotment of the case occurred.

f. The transcript of any joint proceedings held with another defendant(s);

g. The transcript of the entirety of voir dire, including the transcript of any communication made by the judge or the court staff whether within or outside the presence of defense counsel;

h. The transcript of all bench conferences, in chambers hearings or charge conferences;

i. The transcript of all argument and instruction;

j. The transcript of all testimony, including testimony at the penalty phase of the trial;

k. Any and all exhibits introduced in connection with the case;

l. The jury questionnaires, verdict forms, polling slips, and verdicts imposed in the case.

4. In the period following the imposition of a sentence of death and the lodging of the appellate record, counsel should continue to actively represent the client's interests, including investigation and development of arguments relevant to a post-sentencing motion for new trial or defendant's sentence review memorandum. Counsel should take action to preserve the client's interests in his appeal, state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of appellate counsel.

5. Where appropriate, counsel should timely file a post-sentencing motion for new trial.

6. Counsel shall continue to represent the client until successor counsel assumes responsibility for the representation. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to appellate and post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1919. Performance Standard 9: Direct Appeal

A. Duties of Appellate Counsel

1. Appellate counsel should comply with the Capital Guidelines, and these Performance Standards, except where clearly inapplicable to the representation of the client during the period of direct appeal, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition; and,

e. continue an aggressive investigation of all aspects of the case.

2. Appellate counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Appellate counsel should monitor and remain informed of legal developments that may be relevant to the persuasive presentation of claims on direct appeal and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in federal habeas corpus proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. When identifying potential conflicts, appellate counsel should have particular regard to areas of potential conflict that may arise at this stage of proceedings, including:

a. when the defendant was represented at the trial level by appellate counsel or by an attorney in the same law office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, or it appears to appellate counsel that trial counsel provided ineffective representation;

b. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; and

c. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

5. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of the appeal, and counsel should encourage the client to participate in the appellate process.

6. Counsel shall consult with the client on the matters to be raised on appeal and give genuine consideration to any issue the client wishes to raise on appeal. What claims to raise on appeal, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

7. Appellate counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

8. Appellate counsel should obtain and review all prior counsels' file(s). Appellate counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

9. Appellate counsel should ensure that the record on appeal is complete. If any item is necessary to appellate review but is not included in the record, it is appellate counsel's responsibility to file a motion to supplement the record and to seek to have the briefing schedule stayed pending completion of the record.

10. Appellate counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Appellate counsel should consider whether any potential off-record matters may have an impact on how the appeal is pursued, and what kind of an investigation of the matter is warranted.

11. Appellate counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. If an error warranting relief has not yet been presented, Counsel should present it and request error patent review.

12. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied in the state appellate courts, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Counsel should present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's direct appeal open pending the determination of the other case.

13. Petitions and briefs shall conform to all Rules of Court and shall have a professional appearance, shall advance argument and cite legal authority in support of each contention and shall conform to Blue Book rules of citation. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

14. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument. All arguments on assignments of error should include references by page number, or by any more precise method of location, to the place(s) in the transcript which contains the alleged error.

15. Counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice. If appropriate, counsel should move for the remand of the matter and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error or argument for excessiveness that is not adequately supported by the record.

16. Where counsel is considering seeking a remand for further hearing, counsel should undertake a full factual investigation of the issue for which the remand would be sought so that the decision as to whether to seek remand may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek remand for further hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if the case is remanded for further hearing.

17. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "Issues Meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead appellate

counsel, at which the issues raised in the case and the defense theory on appeal can be discussed. The Issues Meeting will ordinarily be conducted in the course of a Case Review meeting under these Standards but where this is not possible, the Issues Meeting should be conducted independently of the Case Review.

18. Counsel should complete a full review of the records of relevant proceedings and trial counsels' files prior to completing a draft of the brief. Lead counsel shall adopt a procedure for screening the brief, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead appellate counsel.

19. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the Issues Meeting, the drafting of the brief, the review of the brief and the finalization of the brief. If appellate counsel is unable to prepare the brief within the existing briefing schedule in a manner consistent with these standards and with high quality appellate representation, it is counsel's responsibility to file a motion to extend the briefing schedule.

20. Counsel shall be diligent in expediting the timely submission of the appeal and shall take all steps necessary to reduce delays and time necessary for the processing of appeals which adversely affect the client.

21. Where counsel is unable to provide high quality representation in appellate proceedings in a particular case, counsel must bring this deficiency to the attention of the capital case supervisor and the capital case coordinator. If the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

22. Following the filing of Appellee's brief and before filing a reply brief, a second Case Review meeting shall be conducted to discuss the defense theory on appeal in light of the issues raised in the Original brief, Appellee's brief and the issues to be addressed in reply and at oral argument.

23. Counsel should, no less than two weeks prior to oral argument, where possible, file a reply brief rebutting legal and factual arguments made by the state. The reply brief should not simply repeat the contents of the original brief but should respond directly to the contentions of the state and any issues arising from the state's brief. Where appropriate, counsel should file a supplemental brief on the merits, seeking leave to do so if the case has already been submitted.

24. Counsel should prepare and timely file a sentence review memorandum in each case. The sentence review memorandum shall address itself to the state's sentence review memorandum and to the question of whether the sentence is excessive, having regard to: the influence of passion, prejudice, or other arbitrary factors; whether the evidence supports the jury's finding of a statutory aggravating circumstance; and whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The sentence review memorandum need not be limited to the matters contained in the record and shall furnish additional information relevant to the court's considerations under La. C. Cr. P. art. 905.9 and Supreme Court Rule XXVIII based upon the results of investigation undertaken pursuant to Performance Standard 9(25).

25. Counsel should undertake a detailed and intensive investigation of the matters relevant to the sentence review memorandum. Counsel shall not rely upon the contents of the state's sentence review memorandum without confirming the accuracy of that memorandum. The investigation should be commenced as soon as practicable after counsel is assigned to the case. Where additional favorable information is developed, counsel should seek a remand of the matter for the development of facts relating to whether the sentence is excessive.

26. Counsel should promptly review the Uniform Capital Sentence Report for accuracy and completeness. Where a response to the Uniform Capital Sentence Report has not previously been filed in the case, or where the response was incomplete or inaccurate, counsel should prepare and file an opposition to the Report in accordance with these standards.

27. Counsel shall promptly inform the client of the date, time and place scheduled for oral argument of the appeal as soon as counsel receives notice thereof from the appellate court. Counsel shall not waive oral argument.

28. To prepare for oral argument, counsel should review the record and the briefs of the parties, and should update legal research. If binding dispositive or contrary authority has been published since the filing of the brief, counsel shall disclose the information to the court. Counsel should be prepared to answer questions propounded by the court. In particular, counsel should be prepared to address whether and where the questions presented were preserved in the record, the applicable standards of review and the prejudice associated with the errors alleged.

29. Lead counsel shall adopt procedures, including at least two moot court arguments, to assist counsel in preparing to present argument. The moot court shall include at least one attorney qualified as lead appellate counsel who was not involved in drafting the brief. The moot will ordinarily be conducted in the course of a Case Review meeting under these Standards but where this is not possible, the moot should be conducted independently of the Case Review.

30. Counsel presenting oral argument should be the person best qualified to present oral argument taking into account experience, the complexity of the case and time to prepare. That person will ordinarily be lead counsel. However, after consultation with the case supervisor and defense team, lead counsel may designate other counsel to present argument, including outside counsel.

31. Where pertinent and significant authorities come to counsel's attention following oral argument, counsel should bring the authorities to the attention to the court by letter or, where appropriate, should seek leave to file a supplemental brief.

32. Counsel shall promptly inform the client of any decision of the appellate court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision. If

the case has been returned to a lower court on remand, counsel should continue in his or her representation (unless and until other counsel has been assigned and formally enrolled) providing any necessary briefing to the court to continue to advocate for the client.

33. Counsel shall promptly inform the capital case coordinator of the disposition in any capital appeal case.

34. Counsel shall timely prepare and file a motion for rehearing, raising all arguments for which a meritorious motion for rehearing can be advanced. Counsel should have particular regard to any changes or developments in the law since the case had been submitted and any errors of fact or law appearing in the decision that may be corrected by reference to the record.

35. The duties of the counsel representing the client on direct appeal ordinarily include filing a petition for certiorari in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify the capital coordinator and the state public defender. In developing, drafting and filing a petition for certiorari, appellate counsel should consult with counsel with particular expertise and experience in litigating applications for certiorari before the United States Supreme Court.

36. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

37. Appellate counsel should be familiar with the procedure for setting execution dates and providing notice of them. Counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution. If an execution date is set, counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

38. In the event that the client's appeal to the Louisiana Supreme Court and application for certiorari to the United States Supreme Court are unsuccessful, appellate counsel shall advise the client of: his or her right to seek state post-conviction relief and federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; the procedure and effect of filing of a petition for post-conviction relief in the state trial court to raise new claims and to exhaust any federal constitutional issues for federal habeas review; and, the procedure for assignment of counsel to represent the client in post-conviction proceedings.

39. Appellate counsel shall, with the client's consent, continue to represent the client for the limited purpose of preserving the client's interests in his state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of post-conviction counsel. Counsel shall carefully explain the limited scope of this representation to the client and provide advice of this limited scope in writing when obtaining the client's consent.

40. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

41. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, Capital Case Direct Appeal Review Form, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1921. Performance Standard 10: State Post-Conviction and Clemency

A. Duties of Post-Conviction Counsel

1. Post-conviction counsel should comply with the Capital Guidelines, and these Performance Standards, except where clearly inapplicable to the representation of the client in the post-conviction period of the case, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Post-conviction counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Post-conviction counsel should monitor and remain informed of legal developments that may be relevant to the persuasive representation of claims in state post-conviction proceedings, in federal habeas corpus proceedings and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in state and federal proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of post-conviction and federal habeas corpus proceedings, and counsel should encourage the client to participate in the collateral review process.

5. Counsel shall consult with the client on the matters to be raised in any post-conviction petition or federal application for habeas corpus and give genuine consideration to any issue the client wishes to raise. What claims to raise, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a *pro se* brief.

6. Post-conviction counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or Supreme Court, and the files in any other related or prior proceedings in the cause.

7. Post-conviction counsel should obtain and review all prior counsels' file(s). Post-conviction counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

8. Post-conviction counsel should ensure that the record of proceedings available for review is complete. If any item is necessary to post-conviction review but is not included in the record of proceedings, it is post-conviction counsel's responsibility to ensure that the record available for review is supplemented.

9. Post-conviction counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Post-conviction counsel should consider whether any potential off-record matters should have an impact on how post-conviction review is pursued, and what kind of an investigation of the matter is warranted.

10. Post-conviction counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. Counsel should undertake a high quality, independent, exhaustive investigation and should not assume that investigation of issues by prior counsel has been complete or adequate.

11. The investigation and litigation of claims should encompass all arguably available claims for relief, including those based upon the grounds that:

a. the defendant is in custody or the sentence was imposed in violation of the Constitution or laws or treaties of the United States;

b. the execution of the defendant would violate the Constitution, laws or treaties of the United States or the Constitution or laws of the state of Louisiana;

c. the conviction was obtained in violation of the constitution of the state of Louisiana;

d. the sentence was obtained in violation of the constitution of the state of Louisiana or is otherwise an illegal sentence;

e. the court exceeded its jurisdiction;

f. the conviction or sentence subjected the defendant to double jeopardy;

g. the limitations on the institution of prosecution had expired;

h. the statute creating the offense for which the defendant was convicted and sentenced is unconstitutional;

i. the conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana;

j. the results of DNA testing performed pursuant to an application granted under La. C. Cr. P. art. 926.1 proves that the petitioner is factually innocent of the crime for which he was convicted; or

k. the defendant is otherwise shown to be factually innocent of the crime for which he was convicted or not eligible for the death penalty.

12. In conducting the investigation, counsel should have particular regard to the possibility that claims for relief may arise from matters not previously fully investigated or litigated, including:

a. the possibility that the state failed to turn over evidence favorable to the defendant and material to his guilt or punishment;

b. the possibility that the state knowingly used false testimony to secure the conviction or sentence;

c. the possibility that the client received ineffective assistance of counsel as to either guilt or penalty in the course of his representation in the trial court or on appeal;

d. the possibility that the jury's verdict is tainted by issues such as jury misconduct, improper separation of the jury, and false answers on voir dire examination; and,

e. the possibility that the client is innocent of the offense charged or not eligible for the death penalty.

13. In investigating the possibility that the client received ineffective assistance of counsel, post-conviction counsel must review both the record in the case and also conduct a thorough investigation of the facts and circumstances beyond the record in order to determine whether a claim exists that counsel's performance was deficient. As these Standards are intended to reflect accepted minimum standards for performance in capital cases, in determining the scope of the investigation to be conducted, post-conviction counsel shall have regard to these Standards as they describe the responsibilities of trial and appellate counsel. Post-conviction counsel shall conduct a sufficiently thorough investigation to determine either that prior counsel's responsibilities were met or to determine the extent of any prejudice arising from the failure to meet those responsibilities.

14. In investigating and developing claims of ineffective assistance of counsel or the suppression of favorable evidence, counsel shall be conscious that evidence will be assessed for its cumulative impact and so should not limit the investigation to those matters that might, in and of themselves, justify relief. Instead, the investigation should extend to those matters which, in combination with others, may justify relief.

15. In investigating, preparing and submitting a petition, counsel should seek such pre-filing discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to a high quality, independent, exhaustive investigation. Counsel should investigate the possibility of and, where appropriate, file an application for DNA testing pursuant to La. C. Cr. P. art. 926.1.

16. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's post-conviction proceedings open pending the determination of the other case.

17. Petitions and supporting memoranda shall conform to all Rules of Court, including Supreme Court Rule XXVII and shall have a professional appearance, conform to acceptable rules of grammar, be free from typographical errors and misspellings, shall advance argument and cite legal authority in support of each contention. Counsel shall utilize out-of-state and federal authority in support of positions when no local authority exists or local authority is contrary to the weight of recent decisions from other jurisdictions. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

18. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies.

19. The post-conviction petition should clearly allege a factual basis for each claim which, if established, would entitle the petitioner to relief and clearly allege all facts supporting the claims in the petition. Counsel shall include with the petition all documents and exhibits that would establish or support the factual basis of the petitioner's claims, including but not limited to court records, transcripts, depositions, admissions of fact, affidavits, statements, reports and other records. In determining the scope of the material to be presented in state court, counsel shall have regard to the likelihood that federal review will be limited to the material presented in state court and so should not refrain from presenting any relevant material unless there are strong strategic reasons to do so.

20. Where counsel raises a claim that has previously been fully litigated in earlier appeal proceedings in the case, counsel shall fully investigate, prepare and submit an argument that the claim is nevertheless eligible for consideration in the interests of justice.

21. Where counsel raises a claim that was not raised in the proceedings leading to conviction or sentence, was not pursued on appeal or was not included in a prior post-conviction petition, counsel shall fully investigate, prepare and submit a claim that the failure to previously raise the claim is excusable.

22. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "Issues Meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead post-conviction counsel, at which the issues raised in the case and the defense theory in post-conviction can be discussed. The Issues Meeting will ordinarily be conducted in the course of a Case Review meeting under these Standards but where this is not possible, the Issues Meeting should be conducted independently of the Case Review.

23. Counsel should complete a full review of the records of relevant proceedings, trial counsels' files and the fruits of the post-conviction investigation prior to completing a draft of the petition. Lead counsel shall adopt a procedure for screening the petition, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead post-conviction counsel.

24. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the Issues Meeting, the drafting of the petition, the review of the petition and the finalization of the petition. If post-conviction counsel is unable to complete the post-conviction investigation and prepare the petition within the existing briefing schedule in a manner consistent with these standards and with high quality post-conviction representation, it is counsel's responsibility to file a motion to extend the filing deadline.

25. Counsel shall be diligent in expediting the timely submission of the post-conviction petition and shall take all steps necessary to reduce delays and time necessary for the processing of petitions which adversely affect the client.

26. Where counsel is unable to provide high quality representation in post-conviction proceedings in a particular case, counsel must promptly bring this deficiency to the attention of the capital case supervisor and the capital case coordinator. If the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

27. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

28. Where the state files procedural objections or an answer on the merits, counsel should file a response rebutting legal and factual arguments made by the state. The response brief should not simply repeat the contents of the original petition but should respond directly to the contentions of the state and any issues arising from the state's filing. Where appropriate, counsel should file a supplemental petition or briefing, seeking leave to do so if required.

29. Counsel should seek such discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to the full development and presentation of all claims in the petition and should document the denial of any such attempts to secure facts in support of possible claims.

30. Counsel should request an evidentiary hearing for all claims in which the state does not clearly admit the factual allegations contained in the petition and seek to prove by admissible evidence those factual allegations that support or establish the client's claims for relief.

31. Where counsel is considering seeking an evidentiary hearing, counsel should undertake a full factual investigation of the issue for which the hearing would be sought so that the decision as to whether to seek a hearing may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek an evidentiary hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if an evidentiary hearing is granted.

32. Following any evidentiary hearing, counsel should file supplemental briefing demonstrating the client's entitlement to relief based upon the petition filed and the evidence adduced at the hearing.

33. Counsel should timely make application for supervisory writs if the trial court dismisses the petition or otherwise denies relief on an application for post-conviction relief. Counsel should take great care to ensure that all writ applications comply with the requirements of the relevant Rules of Court and present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Counsel should ensure that an adequate record is created in the trial court to justify and encourage the exercise of the supervisory jurisdiction of the reviewing court. Counsel should respond to any state application for supervisory writs or appeal except where exceptional circumstances justify the choice not to respond.

34. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including advising the capital case supervisor of the situation and seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

35. Counsel shall promptly inform the client of the decision of the trial court and any reviewing court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision.

36. The duties of the counsel representing the client in state post-conviction proceedings include filing a petition for certiorari in the Supreme Court of the United States. If post-conviction counsel does not intend to file such a petition, he or she should immediately notify the capital coordinator and the state public defender.

37. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

38. Post-conviction counsel should be familiar with the procedure for setting execution dates and providing notice of them. Counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution. If an execution date is set, counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

39. In the event that the client's state post-conviction application is unsuccessful, post-conviction counsel shall advise the client of: his right to seek federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; and, the procedure for assignment of counsel to represent the client in federal habeas corpus proceedings. Having regard to tolling, counsel shall advise the client of the actual period of time that will be remaining for filing a federal petition upon finalization of the state post-conviction proceedings. Counsel shall provide such advice a sufficient period prior to the finalization of state post-conviction proceedings to allow the client to take adequate steps to protect his rights to federal review.

40. Counsel shall promptly inform the capital case coordinator of the disposition in any capital post-conviction case.

41. Counsel shall take all necessary steps to preserve the client's right to federal review, including ensuring that the client is not time barred from seeking relief. Post-conviction counsel shall be responsible for protecting the client's interests in this regard, including ensuring that a federal petition is filed while state post-conviction proceedings remain pending where the time remaining for filing a federal petition following finalization of the state post-conviction proceedings will be inadequate to allow a timely filing at that time.

42. State post-conviction counsel may continue to represent the client in his federal habeas corpus proceedings only with the consent of the capital case coordinator and the informed consent of the client. Adequate representation in federal habeas corpus proceedings will include an investigation of whether state post-conviction counsel provided ineffective assistance in failing to adequately raise a meritorious claim of ineffective assistance of trial or appellate counsel. Just as trial counsel is poorly placed to investigate or litigate his or her own ineffectiveness, state post-conviction counsel may be similarly limited. In these circumstances, the capital case coordinator should not ordinarily consent to continuing representation by state post-conviction counsel in the absence of: informed consent from the client obtained through independent counsel; and, the assignment to the defense team of at least one attorney qualified and experienced in federal habeas corpus proceedings in capital cases who was not involved in the preparation and presentation of the state post-conviction petition.

43. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

44. Counsel should closely monitor the client's competence in post-conviction proceedings, having regard to the requirement that the client be sufficiently competent to be lawfully executed and should investigate and litigate this issue where it is possible that the client does not meet the necessary degree of competence.

B. Duties of Clemency Counsel

1. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.

2. Clemency counsel should conduct an investigation of matters relevant to clemency consistent with these standards and should not assume that the investigation conducted by prior counsel was complete or adequate.

3. Clemency counsel should ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction.

4. Clemency counsel should ensure that the process governing consideration of the client's application is substantively and procedurally just, and, if it is not, should seek appropriate redress.

5. Clemency counsel should fully discharge the ongoing obligations imposed by the Guidelines, and standards including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and

d. continue an aggressive investigation of all aspects of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

§1923. Performance Standard 11: Supervision, Review and Consultation

A. Supervision of the Defense Team

1. Primary responsibility for the supervision of the defense team and the team's compliance with these standards and the guidelines rests with lead counsel. Lead counsel shall establish a system for communication, feedback and supervision of the defense team that shall ensure that the team provides high quality representation and that any deficiencies in compliance with the guidelines or standards are promptly identified and remedied. Lead counsel should ensure that all team members are aware of their obligations under the guidelines and performance standards.

2. Primary responsibility for the supervision of experts rests with lead counsel, though this responsibility may be delegated to other counsel who are more directly responsible for working with a particular expert. Counsel supervising an expert shall ensure that appropriate funding is secured and maintained for the expert's services, that the expert performs the requested services in a timely fashion and to a high quality and that the expert's services are promptly invoiced and paid. By submitting an expert's invoice to the office of the state defender for payment, counsel certifies that the work performed was reasonably necessary and that it was completed to an appropriate standard.

3. The case supervisor is responsible for monitoring the correct, effective and appropriate implementation of the capital guidelines and performance standards in each case. In contrast to the responsibilities of lead counsel to make strategic decisions in the case, this is an administrative level of supervision designed to ensure that the team is assembled and is functioning in accordance with the guidelines and standards. The case supervisor shall be certified as lead counsel and shall have a comprehensive knowledge of the requirements of the capital guidelines and performance standards. The case supervisor shall not be a staff member in the same office as members of the defense team or district defender of the district responsible for the case.

4. The case supervisor for each case shall meet with the defense team no less than once every three months and provide a quarterly report to the capital case coordinator in the form provided, advising of the extent to which the team and its representation are in compliance with the guidelines and standards.

5. The case supervisor is a lawyer engaged to consult with counsel on the defense team within lawyer-client privilege to assist in ensuring that each client is receiving high quality representation in compliance with the capital guidelines and performance standards. The case supervisor does not, by virtue of being case supervisor, have the authority to act on behalf of the defendant or to direct members of the defense team to take any action or refrain from taking any action. The case supervisor may make recommendations to the defense team, resolve workload questions pursuant to Guideline §919 and report non-compliance with the guidelines to the district public defender and state public defender. All members of the defense team shall cooperate with the case supervisor and provide access to the case file and case theory documents as requested.

6. The state defender, district defender or director of a defender organization having an employment or contractual relationship with counsel on a defense team may exercise such supervisory and regulatory authority as is consistent with the *Louisiana Rules of Professional Conduct* and provided for within that employment or contractual relationship. However, it shall remain at all times the responsibility of individual counsel to ensure that representation is provided in accordance with the capital guidelines and performance standards.

7. The capital case coordinator shall have responsibility for monitoring the performance of counsel and defender organizations providing capital representation in the state and reporting to the state defender. In performing this supervisory role, the capital case coordinator shall have particular regard to: the capital guidelines and performance standards; applications for certification and re-certification of counsel; quarterly reports submitted by case supervisors; requests for expert assistance by counsel; briefings from counsel following the closure of cases; findings and recommendations of case review committees formed under Guideline §921(C); case observation; and other reliable sources of information.

8. Where the capital case coordinator becomes aware that a defense team is not providing representation consistent with these guidelines and associated performance standards, the capital case coordinator, shall take necessary action to protect the interests of the attorney's current and potential clients.

B. Case Review Meetings, Consulting Counsel and Practice Advisories

1. In order to ensure high quality legal representation in each case, identify any problems in the case in a timely fashion, develop the knowledge and skill of capital defenders and build the capacity of the indigent capital defense community in this state, representation in each case should include the use of case review meetings.

2. Case review meetings are meetings facilitated by a professional external to the team. Case review meetings will include the whole defense team, the facilitator and a diverse group of appropriately qualified professionals external to the team (both lawyers and non-lawyers). The case review meeting will involve a systematic and comprehensive review of the case and the representation appropriate to the stage of proceedings and preparation of the case. The case review meeting will involve a structured dialogue and critical thinking designed to empower the defense team and is not designed as a mechanism for assessing the performance of the defense team or its members. The case review meeting will produce a list of concrete commitments from the defense team arising from the discussions in the case review meeting.

3. The documents prepared for each case review meeting, the minutes of the case review meeting and the commitments arising from each case review meeting shall be maintained by counsel in the relevant case file and shall be available for review by the case supervisor.

4. At each stage of representation in a case (trial, appellate and post-conviction) there should ordinarily be a minimum of three case review meetings conducted. Case review meetings will ordinarily be conducted: early in the assignment of the case (to ensure the team has been properly assembled, is adequately resourced and has an appropriate plan for advancing representation in the case); once substantial work on the case has been commenced (to ensure that the work is proceeding appropriately, to provide feedback on the defense theory, to provide input on investigative and litigation planning and to respond to particular issues that have developed in the case); and, as the case is approaching the culmination of the work at the particular stage of representation (to ensure that the case is ready to proceed, to provide feedback on the planned execution of the case theory that has been developed and to troubleshoot any final issues that have arisen).

5. Facilitators for case reviews conducted pursuant to these standards shall be approved by the capital case coordinator.

6. In addition to counsel assigned as a part of the defense team and the case supervisor, counsel should consult with and take advantage of the skills and experience of other certified capital defenders. The state defender may require as a condition of provisional certification that counsel consult with other counsel designated by the state defender. Counsel may consult on a specific issue or issues, or may consult in an ongoing fashion with the defense team.

7. Counsel consulting on a case is acting within lawyer-client privilege and should maintain confidentiality accordingly.

8. Counsel consulting with a defense team should ensure that their work as a consulting counsel and any advice provided is fully documented. In order to ensure the accuracy of any advice provided, consulting counsel should seek to reduce that advice to writing, including a notation of the issue presented and the factual or legal assumptions that underpin the advice. This requirement is not intended to require consulting counsel to provide briefing on the basis of any advice or otherwise increase the scope of the responsibility of counsel consulting on the case but instead to ensure that such advice as is given is reduced to writing to avoid the miscommunications inherent in oral communication.

9. In order to assist capital defenders in the performance of their duties, the capital case coordinator may from time to time issue practice advisories. These practice advisories shall not have the status or effect of rules promulgated by the Louisiana Public Defender Board. The practice advisories represent the opinion of the office of the state public defender as to best practices and are intended to provide a timely and flexible way to provide expert advice to the field on specific or emerging areas in capital defense.

10. Before a practice advisory may be issued, it must be approved by an advisory committee of no less than four members including counsel actively engaged in capital defense at trial, appellate and post-conviction level. No practice advisory shall be issued without the approval of the state public defender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 41:

Family Impact Statement

The proposed Rules have no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rules have no known impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

The proposed Rules have no impact on providers as defined in HCR 170 of 214.

Public Comments

Written comments may be addressed to James T. Dixon, Jr., State Public Defender, Louisiana Public Defender Board, 500 Laurel Street, Suite 300, Baton Rouge, LA 70801 until 4:30 p.m. on November 10, 2014.

Public Hearing

A public hearing on these proposed Rules is scheduled for Tuesday, November 25, 2014 at 2 p.m., 500 Laurel Street, Suite 300, Baton Rouge, LA 70801. 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.

James R. Dixon, Jr.
State Public Defender

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Performance Standards for Criminal Defense Representation in Indigent Capital Cases

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

It is anticipated that the implementation of these proposed rules will result in state general fund programmatic costs of $620,350 for FY 16, $1,240,701 for FY 17, $2,481,402 for FY 18, and $3,101,752 for FY 19. It is estimated that a one-time expense of approximately $5,900 will be incurred in FY 15 to promulgate and publish the proposed rules.

LPDB currently has funding for this rule in FY 15 due to a $1.29M professional services contract with the Capital Appeals Project of Louisiana, a non-profit capital defense contract in the 1st Judicial District Court (Caddo), that is not being renewed. However, the funding source for FY 15 will not be recurring and funding for continued implementation of the proposed rules is contingent upon legislative appropriation. If monies are not appropriated for this rule, LPDB will disburse funds to districts on a discretionary basis to the extent that they become available within their enacted budget.

The performance standards implemented through the rule change for the defense of an indigent defendant in capital cases are intended to alert defense counsel to courses of action that are necessary, advisable, and appropriate. The standards are designed to assist attorneys in deciding upon the particular actions that should be taken in each case to ensure that the capital client receives high quality legal representation. The costs shown above provide for assembling the proper defense team for capital cases, which includes investigators and mitigation specialists. The district offices will employ the mitigation specialists and investigators that make up part of a proper defense team on either a full-time or contract basis. LPDB estimates that 18 full-time positions for mitigation specialists and 20 fact investigators will be necessary to adhere to the proposed standards.

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

There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed administrative rules.

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

Indigent defendants who rely on the public defense system will benefit from the high standard of representation set in the proposed rules. Public defender attorneys will also benefit from the standards outlined in the proposed rules set out as guidelines for high quality representation. The extent of the economic benefit is indeterminable as it may extend beyond the scope of the representation to the family of the defendant.

However, due to the contract with the Capital Appeals Project of Louisiana ending, LPDB's ability to provide capital defense in the 1st Judicial District Court (Caddo) may be slowed as a result of having to provide counsel on a case-by-case basis. The practice of providing counsel on a case-by-case basis is more expensive than using a contractor. To the extent that indigent capital defense cases arise, LPDB may not be able to fund these expenditures due to diverting monies to fund the proposed standards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed rules may have an impact on employment in the public sector in that the standards envision hiring mitigation specialists and investigators that are not currently a part of the public defense system. An estimate of the economic impact is indeterminable as it depends on the number of and salary for the qualified mitigation specialists and investigators.

James T. Dixon, Jr.
State Public Defender
1410#049

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Examiners of Nursing Facility Administrators

Preceptor Update, Continuing Education, and Fee Schedule
(LAC 46:XLIX.703, 903, and 1201)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2501 et seq., that the Louisiana Board of Examiners of Nursing Facility Administrators proposes to amend LAC 46:XLIX.703, 903, 1201. The proposed Rule change increases the number of hours of approved continuing education credits that must be completed annually from 15 to 18 and limits the maximum number of those hours from approved online courses to 9. The proposed Rule change also increases specific fees to provide sufficient revenues for increases in the operating costs of the Board of Examiners.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIX. Nursing Facility Administrators
Chapter 7. Administrator-in-Training (AIT)
§703. Preceptor

A. - E. …

F. Preceptor Update. Preceptors must undertake an approved training course every three years sponsored by the board in order to maintain this certification. The training qualifies as required continuing education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 9:62 (February 1983), LR 10:499 (July 1984), LR 12:512 (August 1986), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1023 (August 1993), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:593 (February 2011), LR 41:

Chapter 9. Continuing Education
§903. Requirements

A. Number of Hours. Each licensee must complete a minimum of 18 hours of approved continuing education, or the portion thereof as designated by the board during the 12-month period preceding the date of re-registration of licenses.

1. A maximum of 9 hours of approved online continuing education may be credited towards the total 18 hours.

B. - C.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504 and R.S. 37:2506.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Examiners of Nursing Home Administrators, April 1970, amended and promulgated LR 6:276 (June 1980), amended LR 11:864 (September 1985), LR 13:240 (April 1987), repealed and repromulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Home Administrators, LR 18:181 (February 1992), amended by the Board of Examiners of Nursing Facility Administrators, LR 19:1023 (August 1993), repromulgated LR 19:1322 (October 1993), amended by the Board of Examiners of Nursing Facility Administrators, LR 37:593 (February 2011), LR 39:1046 (April 2013), LR 41:

Chapter 12. Fees and Assessments

§1201. Fee Schedule

A. The board hereby establishes the following fees and costs to be imposed for the purpose of implementing and enforcing the provisions of this Part.

Administrator address labels/page	$8
Annual Conditional Registration Fee	$210
Annual Registration Fee	$395
Application Packet	$100
Certification of document as true copy	$10
CNA/DSW Card	$13
Continuing Education Provider (annually)	$600
Delinquent fee	$250
Directory of Administrators	$15
Failure to maintain current information	$80
Handling and mailing per page	$2
Initial Registration Fee	$395
Minimum Licensure Standards Book	$15
NFA Application Fee	$600
NFA Replacement Card (with photo)	$17
NSF Fee	$50
Photocopies of document/page	$0.50
Reciprocity Fee (to another state)	$50
Reciprocity Fee (to Louisiana)	$125
Replace License Card	$12
Replace License (original)	$50
Replace Registration Certificate or 2nd copy	$25
Request for CEU Approval (applicant)	$50
Request for CEU Approval (vendor)	$75
Seminars (per hour of instruction)	$50
State Exam Fee	$120
State Exam Retake Fee	$150

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2504.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Nursing Facility Administrators, LR 37:596 (February 2011), amended LR 39:1047 (April 2013), LR 41:

Family Impact Statement

The proposed amendments to LAC 46:XLIX.703, 903, and 1201, should not have any impact on family as defined by R.S. 49:972. There should not be any effect on: the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, and/or the ability of the family or local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed amendments to LAC 46:XLIX.703, 903, and 1201, should not have any known or foreseeable impact as described in R.S. 49:973.

Provider Impact Statement

The proposed amendments to LAC 46:XLIX.703, 903, and 1201, should not have any known or foreseeable impact as defined by HCR 170 of 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments until 4 p.m. on November 9, 2014 to Mark A. Hebert, Board of Examiners of Nursing Facility Administrators, 5647 Superior Drive, Baton Rouge, LA 70816.

Mark A. Hebert
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Preceptor Update, Continuing Education, and Fee Schedule

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 $300 during the current fiscal year, it is not anticipated that the proposed rule amendments will result in any costs or savings to the Board of Examiners or local government units. The proposed rule change increases the number of hours of approved continuing education credits that must be completed annually from 15 to 18 and limits the maximum number of those hours from approved online courses to 9. The proposed rule change also increases specific fees to provide sufficient revenues for increases in the operating costs of the Board of Examiners.

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

The Board of Examiners will realize an increase of approximately $35,000 in fees and self-generated revenues in FY15, with the increase growing to approximately $50,000 in FY17. There is no anticipated effect on the revenue collections of other state or local governmental units.

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

There will be an increase in certain fees to impact individuals interested in becoming or renewing certification as a Licensed Nursing Facility Administrator, Licensed Nursing Facility Administrator in Training, or Certified Nursing Assistant, as well as Vendors who provide seminars or courses for continuing education credit. Individuals that attain licensure will also realize an increase in continuing education requirements of an additional 3 credit hours over the existing standard (an increase from 15 to 18).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Mark A. Hebert
Executive Director
1410#036

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Medical Examiners

Licensure, Certification and Practice; Occupational Therapists and Occupational Therapy Assistants
(LAC 46:XLV.Chapters 19 and 49)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (Board) by the Louisiana Medical Practice Act, R.S. 37:1270, and the Louisiana Occupational Therapy Practice Act, R.S. 37:3001-3014, the board intends to amend its rules governing licensure, certification and practice of occupational therapists and occupational therapy assistants, LAC 46:XLV, Chapters 19 and 49 to update the rules and make substantive and technical modifications consistent with or made necessary by the passage of time and current practices of the Board. Among other items in Subpart 2, the changes incorporate certain revised definitions (§1903), update the sections on qualifications (§1907) and application procedure (§1913), repeal various sections relative to the licensing examination that are no longer necessary (§§1923-1929), update the reporting of examination scores (§1933), and consolidate and clarify the provisions relating to temporary and permanent licensure (§§1939-1955). The continuing professional education requirement is reduced from fifteen to twelve hours for license renewal (§1965) and for purposes of license reinstatement (§1975). Among other changes in Subpart 3, the definitions and other sections have been updated generally and to reflect changes in the controlling law (§§4903, 4909, 4911, 4915, 4917 and 4927), restate and update provisions respecting quality assurance and service competency (§4919), redesignate some sections (§§4921, 4929, 4931) and clarify and amend the requirements for supervision of occupational therapy assistants in various settings (§4925).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 2. Licensure and Certification
Chapter 19. Occupational Therapists and Occupational Therapy Assistants
Subchapter A. General Provisions
§1903. Definitions

A. As used in this Chapter the following terms shall have the meanings specified.

* * *

Occupational Therapy—the application of any activity in which one engages for the purposes of evaluation, interpretation, treatment planning, and treatment of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorders, congenital or developmental disabilities, or the aging process, in order to achieve optimum functioning and prevention and health maintenance. The occupational therapist may enter a case for the purposes of providing consultation and indirect services and evaluating an individual for the need of services. Prevention, wellness and education related services shall not require a referral; however, in workers' compensation injuries preauthorization shall be required by the employer or workers' compensation insurer or provider. Implementation of direct occupational therapy to individuals for their specific medical condition or conditions shall be based on a referral or order from a physician, advanced practice registered nurse, dentist, podiatrist, or optometrist licensed to practice in the state of Louisiana. Practice shall be in accordance with current standards of practice established by the American Occupational Therapy Association, Inc., and the essentials of accreditation established by the agencies recognized to accredit specific facilities and programs. Specific occupational therapy services include, but are not limited to, activities of daily living (ADL); the design, fabrication, and application of prescribed temporary splints; sensorimotor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the handicapped. These services are provided to individuals or groups through medical, health, educational, and social systems.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004), LR 41:

Subchapter B. Qualifications for License
§1907. Qualifications for License

A. To be eligible for a license, an applicant shall:

1. ...

2. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the United States Citizenship and Immigration Services (USCIS) of the United States, Department of Homeland Security, under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the commissioner's regulations thereunder (8 CFR);

3. ...

4. have taken and successfully passed the licensing examination required by the board in accordance with Subchapter D of this Chapter.

5. file an application for licensure in a format prescribed by the board;

6. present proof of current certification by the NBCOT in a manner as prescribed by the board.

B. ...

C. In addition to the substantive qualifications specified in §1907.A, to be eligible for a license, an applicant shall satisfy the procedures and requirements for application provided by §§1911 to 1915 of this Chapter and the procedures and requirements for examination provided by §§1917 to 1935 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004), LR 41:

Subchapter C. Application

§1913. Application Procedure

A. Application for licensing shall be made in a format prescribed by the board.

B. Application and instructions may be obtained from the board's web page or by personal or written request to the board.

C. An application for licensing under this Chapter shall include:

1. proof, documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Chapter;

2. a recent photograph of the applicant; and

3. such other information and documentation as the board may require to evidence qualification for licensing.

D. All documents required to be presented to the board or its designee must be the original thereof. For good cause shown, the board may waive or modify this requirement.

E. The board may refuse to consider any application which is not complete in every detail, including submission of every document required by the application. The board may, in its discretion require a more detailed or complete response to any request for information set forth in the application form as a condition to consideration of an application.

F. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:237 (February 2004), LR 41:

Subchapter D. Examination

§1923. Observance of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004), repealed, LR 41:

§1925. Subversion of Examination Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004), repealed, LR 41:

§1927. Finding of Subversion

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004), repealed. LR 41:

§1929. Sanctions for Subversion of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repealed by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§1933. Reporting of Examination Score

A. Applicants for licensure shall be required to authorize the NBCOT to release their test scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004), LR 41:

Subchapter E. Temporary License

§1939. License Pending Examination; Reexamination; Renewal

A. The board shall issue a temporary license to practice occupational therapy to an applicant who has completed the academic and supervised field work experience requirements specified under §1907 of this Chapter and has applied for and is waiting examination. The temporary license shall be valid for three months or until the date on which results of the qualifying examination have been known to and acted upon by the board, whichever is the longer.

B. An occupational therapist or occupational therapy assistant holding a temporary license issued under this Section may practice occupational therapy only under the direction of an occupational therapist licensed by the board, who shall provide such on premises, close supervision of and instruction to the temporary license holder as is adequate to ensure the safety and welfare of patients. The direction and supervision required with respect to:

1. an occupational therapist holding a temporary license under this Section shall be deemed to be satisfied by on-premises direction and immediate supervision by a licensed occupational therapist for not less than two hours each week;

2. an occupational therapy assistant holding a temporary license under this Section shall be deemed to be satisfied by on-premises direction and immediate supervision by a licensed occupational therapist for not less than 25 percent of the average weekly caseload.

C. A temporary license shall be renewable only once, subject to the same terms and conditions of this Section, if the applicant has not passed the examination or if the applicant has failed to take the examination. Exceptions to the one extension rule can be given at the discretion of the board upon a request identifying extenuating circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 14:351 (June 1988), LR 41:

§1940. Provisional Temporary Permit Pending Application for Visa

A. The board may issue a provisional temporary permit to an applicant for any license or permit provided for by these rules who is otherwise completely qualified for such license or permit, save for possessing an H-1 or equivalent visa as may be required by these rules, provided that the applicant has completed all applicable requirements and procedures for issuance of a license or permit and is eligible for an H-1 or equivalent visa under rules and regulations promulgated by the USCIS.

B. A provisional temporary permit issued under this Section shall be of the same type and scope, and subject to the same terms and restrictions, as the license or permit applied for, provided, however, that a provisional temporary permit issued under this Section shall expire, and become null and void, on the earlier of:

1. ...

2. 10 days following the date on which the applicant receives notice of USCIS action granting or denying the applicant's petition for an H-1 or equivalent visa; or

3. ...

C. The board may, in its discretion, extend or renew, for one or more additional 90-day periods, a provisional temporary permit issued hereunder which has expired pursuant to §1940.B.1, in favor of an applicant who holds a provisional temporary permit issued under this Section and who has filed a petition for H-1 or equivalent visa with the USCIS, but whose pending petition has not yet been acted on by the USCIS within 90 days from issuance of such provisional temporary permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:1144 (September 1993), amended LR 41:

§1941. License Pending Reexamination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 14:351 (June 1988), repealed LR 41:

§1942. Permit Pending Appearance before Board

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:340 (March 1993), repealed LR 41:

Subchapter F. License Issuance, Termination, Renewal and Reinstatement

§1943. Issuance of License

A. If the qualifications, requirements, and procedures prescribed or incorporated by §§1907 to 1915 are met to the satisfaction of the board, the board shall issue to the applicant a license to engage in the practice of occupational therapy in the state of Louisiana upon payment of the license fees set forth in Chapter 1 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§1945. Expiration of License

A. Every license issued by the board under this Chapter shall expire and thereby become null, void, and to no effect each year on the last day of the month in which the licensee was born.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:1499 (August 1998), LR 41:

§1947. Renewal of License

A. Every license issued by the board under this Subchapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal in a format prescribed by the board, together with the renewal fee prescribed in Chapter 1 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by Subchapter H of these rules.

B. Renewal application and instructions may be obtained from the board’s web page or upon personal or written request to the board.

C. The renewal of a license which has expired for 60 days or less may be renewed by submitting to the board an application for renewal a manner prescribed by the board together with the late renewal fee prescribed in Chapter 1 of these rules.

D. Current NBCOT registration or certification is not a prerequisite to renewal of a license to practice as an occupational therapist or occupational therapy assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 24:1499 (August 1998), LR 30:237 (February 2004), LR 30:423 (March 2004), LR 41:

§1949. Reinstatement of License

A. ...

B. An application for reinstatement shall be made in a format prescribed by the board, together with the applicable late renewal and reinstatement fees prescribed in Chapter 1 of these rules.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 30:423 (March 2004), LR 41:

§1951. Titles of Licensees

A. Any person who is issued a license as an occupational therapist under the terms of this Chapter may use the words "occupational therapist," "licensed occupational therapist," or he may use the letters "OT" or "LOT," in connection with his name or place of business to denote his licensure. In

addition, any person currently licensed by the board and certified or registered by and in good standing with the NBCOT, may use the words "licensed occupational therapist registered" or "occupational therapist registered" or "LOTR" or "OTR."

B. Any person who is issued a license as an occupational therapy assistant under the terms of this Chapter may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or he may use the letters "OTA" or "LOTA" in connection with his name or place of business to denote his licensure. In addition, any person currently licensed by the board and certified as an assistant by and in good standing with the NBCOT, may use the designation "licensed certified occupational therapy assistant" or "LCOTA" or "certified occupational therapy assistant" or "COTA."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004), LR 41:

§1953. Suspension and Revocation of License; Refusal to Renew

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repealed, by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

Subchapter H. Continuing Professional Education

§1965. Continuing Professional Education Requirement

A. Subject to the exceptions specified in §1979 of this Subchapter, to be eligible for renewal of licensure an occupational therapist or occupational therapy assistant shall, within each year during which he or she holds licensure, evidence, and document in a manner prescribed by the board, the successful completion of not less than 12 contact hours, or 1.2 continuing education units (CEUs).

B. One CEU constitutes 10 hours of participation in an organized continuing professional education program approved by the board and meeting the standards prescribed in this Subchapter; one continuing professional education hour is equal to one-tenth of a CEU. Twelve hours, or 1.2 CEUs, is required to meet the standards prescribed by this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1004 (September 1994), amended LR 41:

§1973. Documentation Procedure

A. Annual documentation and certification of satisfaction of the continuing professional education requirements prescribed by these rules shall accompany an applicant's annual renewal of licensure in a format prescribed by the board.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1005 (September (1994), amended LR 41:

§1975. Failure to Satisfy Continuing Professional Education Requirements

A. - A.3. ...

B. The license of an occupational therapist or occupational therapy assistant whose license has expired by nonrenewal or has been revoked for failure to satisfy the continuing professional education requirements of these rules may be reinstated by the board upon written application to the board, accompanied by payment of a reinstatement fee, in addition to all other applicable fees and costs, of $50, together with documentation and certification that:

1. the applicant has, within the preceding 12 months, completed 12 contact hours (1.2 CEUs) of qualifying continuing professional education;

2. the applicant is currently certified by the NBCOT; or

3. the applicant has, within one year prior to making application for reinstatement, taken and successfully passed the recertification examination of the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1005 (September 1994), amended LR 24:1499 (August 1998), LR 30:424 (March 2004), LR 41:

Subpart 3. Practice

Chapter 49. Occupational Therapists and Occupational Therapy Assistants

Subchapter A. General Provisions

§4903. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

Activities of Daily Living—the components of everyday activity.

Activity Limitation—the exclusion of certain activities, or restrictions in method of duration of performance.

Assistive/Adaptive Equipment—a special device which assists in the performance of occupations.

* * *

Client—a person, group, program, organization or community for whom the occupational therapy practitioner is providing service (American Occupational Therapy Association).

Client Care Conference—a meeting between the supervising occupational therapist, who must have previously evaluated and/or treated the client, and an occupational therapy assistant to discuss client progress or lack thereof, client issues, revision of goals, initiation, modification or termination of an individual program plan, assessment of utilization of additional resources, discharge and any other information which may affect a client's plan of care. Except when specifically required in this Chapter to be conducted by face to face conference, such meeting may be undertaken by telephone or other means of telecommunication which allows for simultaneous interactive discussion between the supervising occupational therapist and occupational therapy assistant.

* * *

Cognitive Skills—actions or behaviors a client uses to plan and manage the performance of an activity.

* * *

Consultation—process of assisting a client, agency, or other provider by identifying and analyzing issues, providing information and advice and developing strategies for current and future actions.

Context—a variety of interrelated conditions within and surrounding the client that influences performance including, but not limited to, cultural, personal, temporal, virtual, physical and social.

Coping Skills—the ability to sublimate drives, find sources of need gratification, tolerate frustration and anxiety, experience gratification, and control impulses.

Documents—the written recording of information in the client's overall record/chart and/or in the occupational therapy record/chart.

* * *

Early Intervention Setting—a natural environment, such as a child's home, child care or other community setting in which children through 3 years of age (36 months) participate.

Education—an intervention process that involves the imparting of knowledge and information about occupation and activity. This does not include school based occupational therapy.

* * *

Kinetic Activities—those activities requiring motion. It can include activities of daily living and isometric, assistive, resistive exercises.

Louisiana Occupational Therapy Practice Act or *the Act*—R.S. 39:3001-3014 as hereafter amended or supplemented.

Mobility—moving from one place to another during the performance of everyday activities, including skills such as getting in/or out of bed, chair, wheelchair, vehicles, using transportation, functional ambulation and transporting objects.

* * *

Occupational Therapy—the application of any activity in which one engages for the purposes of evaluation, interpretation, treatment planning, and treatment of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorders, congenital or developmental disabilities, or the aging process, in order to achieve optimum functioning and prevention and health maintenance. The occupational therapist may enter a case for the purposes of providing consultation and indirect services and evaluating an individual for the need of services. Prevention, wellness and education related services shall not require referral, however, in workers' compensation injuries preauthorization shall be required by the employer or workers' compensation insurer or provider. Implementation of direct occupational therapy to individuals for their specific medical condition or conditions shall be based on a referral or order from a physician, dentist, podiatrist, advanced practice registered nurse, or optometrist licensed to practice in the state of Louisiana. Practice shall be in accordance with current standards of practice established by the American Occupational Therapy Association, Inc., and the essentials of accreditation established by the agencies recognized to accredit specific facilities and programs. Specific occupational therapy services include, but are not limited to, activities of daily living (ADL); the design, fabrication, and application of prescribed temporary splints; sensorimotor activities; the use of specifically designed crafts; guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; pre-vocational evaluation and training and consultation concerning the adaptation of physical environments for the handicapped. These services are provided to individuals or groups through medical, health, educational, and social systems.

* * *

Occupational Performance—the act of engaging in any occupation including activities of daily living (ADL), instrumental ADLs (IADL), rest and sleep, education, work, play, leisure, and social participation.

Performance Skills—the abilities clients demonstrate in the actions they perform. The learned and developmental patterns of behavior which are the prerequisite foundations of occupation. The performance skills components include: motor skills, sensory perceptual skills, praxis skills, emotional regulation, communication and social/skills.

Periodically—occurring at regular intervals of time not less than every two weeks or the sixth visit, whichever comes first.

* * *

Self-Care Skills—activities that are oriented toward taking care of one's own body, including, but not limited to, skills such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, hygiene/grooming, sexual activity, and toilet hygiene.

* * *

Wellness—an active process through which individuals become aware of and make choices toward a more successful existence. Wellness is more than a lack of disease symptoms. It is a state of mental and physical balance and fitness.

* * *

Work Skills—skills such as habits, workmanship, actual skills related to specific job tasks. The skills may refer to the work of the student, paid employee, retiree or volunteer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 28:1976 (September 2002), LR 30:424 (March 2004), LR 41:

Subchapter B. Standards of Practice

§4907. Screening

A. Occupational therapists have the responsibility to identify clients who may present problems in occupational performance that would require an evaluation.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§4909. Referral

A. A client is appropriately referred to occupational therapy for remediation, maintenance, or prevention when the client has, or appears to have, a dysfunction or potential for dysfunction in occupational performance or performance skills.

B. ...

C. The occupational therapist enters a case at the request of a Louisiana licensed physician, dentist, podiatrist, optometrist or advanced practice nurse practitioner; assumes full responsibility for the occupational therapy evaluation and; and, in consultation with the referring physician, dentist, podiatrist, optometrist or advanced practice nurse practitioner, establishes the appropriate type, nature, and mode of service.

D. Occupational therapists shall refer clients back to the physician, dentist, podiatrist, optometrist or advanced practice nurse practitioner when, in the judgment of the occupational therapists, the knowledge and expertise of another professional is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§4911. Evaluation

A. Occupational therapists shall evaluate the client's performance according to the current AOTA guidelines.

B. Initial occupational therapy evaluations shall consider the client's medical, vocational, educational, activity, context, environment, social history, and personal/family goals.

C. The occupational therapy evaluation shall include assessment of the functional abilities and deficits as related to the client's needs in the following areas:

1. occupational performance: activities of daily living, instrumental activities of daily living, rest and sleep, education, work, play, leisure, and social participation;

2. performance components: sensory perceptual skills, motor, praxis skills, emotional regulation, communication, social skills, cognitive, and psychosocial;

3. therapeutic adaptations and prevention, context and environment.

D. - H. ...

I. Occupational therapists shall communicate evaluation results to the referring physician, dentist, podiatrist, optometrist or advanced practice registered nurse and/or appropriate persons in the facility.

J. If the results of the evaluation indicate areas that require intervention by other professionals, the occupational therapist should refer the client back to the physician, dentist, podiatrist, optometrist or advanced practice registered nurse or appropriate persons in the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§4915. Individual Program Implementation

A. Implementation of direct occupational therapy to individuals for their specific medical condition or conditions shall be based on a referral or order from a physician, dentist, podiatrist, optometrist or advanced practice registered nurse licensed to practice in the state of Louisiana.

B. ...

C. Occupational therapists shall formulate and implement program modifications consistent with changes in the client's occupational performance and performance skills.

D. Occupational therapists shall periodically re-evaluate and document the client's occupational performance and performance skills.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 28:1977 (September 2002), LR 41:

§4917. Discontinuation of Services

A. ...

B. Occupational therapists shall document the comparison of the initial and current state of functional abilities and deficits in occupational performance and performance skills.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended, by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§4919. Quality Assurance and Service Competency

A. - B. ...

C. Any occupational therapist supervising an occupational therapy assistant must have performed and documented a service competency on the occupational therapy assistant. The occupational therapist must have previously evaluated and/or treated any client being seen by an occupational therapy assistant he or she is supervising. In addition:

1. Initial Service Competency. Following acceptance of responsibility to supervise an occupational therapy assistant, but prior to utilization of such assistant in the implementation of any client program plan or other administration of occupational therapy to a client, the supervising occupational therapist shall initially evaluate and document the occupational therapy assistant's service competency to administer all occupational therapy services which are to be performed under his or her supervision and direction. The service competency is designed to document the occupational therapy assistant’s skill set;

2. Annual Service Competency. Following such an initial evaluation the supervising occupational therapist shall thereafter annually conduct and document a service competency to determine the occupational therapy assistant's skill set;

3. Documentation of Service Competency. Documentation of initial and annual competency shall include the date the evaluation was performed, a description of the tasks evaluated, and the name, signature and Louisiana license number of the supervising occupational therapist conducting the service competency evaluation;

4. in practice settings where an occupational therapy assistant is supervised by more than one occupational therapist, service competencies (initial and/or annual) performed by one supervising occupational therapist will satisfy the requirements of this Section for all occupational therapists supervising the occupational therapy assistant in the performance of the same services, provided that their name, signature and Louisiana license number appears on the evaluation;

5. a supervising occupational therapist shall insure such documentation is maintained by the occupational therapy assistant and at each clinic, facility or home health agency where the occupational therapy assistant practices under his or her supervision.

D. A supervising occupational therapist is responsible for and must be capable of demonstrating compliance with the requirements of this Chapter and AOTA supervision guidelines respecting supervision of occupational therapy assistants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270.B.(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 28:1977 (September 2002), LR 41:

§4923. Reserved

§4925. Supervision of Occupational Therapy Assistants

A. - D.3....

E. In addition to the terms and conditions specified in §4919 and §4925.A-D, the following additional requirements are applicable to an occupational therapy assistant's administration of occupational therapy under the supervision of an occupational therapist.

1. In any clinical setting, other than specified by §4925.E.3:

a. an occupational therapy assistant with less than one year of practice experience:

i. shall receive close client care supervision in each clinical setting for not less than one of every four, or 25+ percent, of those clients to whom he or she has administered occupational therapy during an average weekly case load;

ii. in addition, a client care conference shall be held with respect to each client to whom the occupational therapy assistant administers occupational therapy;

b. an occupational therapy assistant with more than one but less than two years of practice experience:

i. shall receive close client care supervision in each clinical setting for not less than one of every 10, or 10 percent, of those clients seen during an average weekly case load;

ii. in addition, a client care conference shall be held with respect to each client to whom the occupational therapy assistant administers occupational therapy;

c. an occupational therapy assistant with more than two years of practice experience:

i. shall receive a client care conference with respect to each client to whom the occupational therapy assistant administers occupational therapy.

2. School System, Long-Term Psychiatric and-Nursing Home Facility Settings. In addition to the requirements prescribed in §4925.E.1, clients in school system, long-term psychiatric or nursing home facility settings shall be re-evaluated or treated by the supervising occupational therapist not less frequently than the earlier of once a month or every sixth treatment session.

3. - 3.c....

4. Early Intervention Setting. The terms and conditions prescribed by §4925.E.1 shall not be applicable to an early intervention setting. An occupational therapy assistant may assist in implementation of a client program plan in an early intervention setting under the supervision of an occupational therapist provided all the following terms, conditions and restrictions of this Chapter, except §4925.E.1, are strictly observed:

a. an occupational therapy assistant shall have had not less than two years practice experience in providing occupational therapy prior to administering occupational therapy in an early intervention setting;

b. each client in an early intervention setting to whom an occupational therapy assistant administers occupational therapy shall be re-evaluated or treated by the supervising occupational therapist not less frequently than the earlier of once a month or every sixth treatment session; and

c. a client care conference shall occur not less frequently than the earlier of once every month or every sixth treatment session to discuss all clients to whom the occupational therapy assistant has administered occupational therapy in an early intervention setting. Such conference shall be documented and maintained by the supervising occupational therapist in a supervisory log.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270.B.(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:340 (March 1993), amended LR 28:1977 (September 2002), LR 41:

Subchapter C. Unauthorized Practice, Prohibitions and Causes for Administrative Action

§4927. Unauthorized Practice

A. No individual shall engage in the practice of occupational therapy in this state in the absence of a current license or permit duly issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§4929. False Representation of Licensure Prohibited [Formerly §1955]

A. No person who is not licensed under this Chapter as an occupational therapist or an occupational therapy assistant, or whose license has been suspended or revoked, shall use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapy assistant," "licensed occupational therapy assistant," or the letters, "OT," "LOT," "OTA," "LOTA," or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant, or in any way, orally, in writing, in print, or by sign, directly or by implication, represent himself as an occupational therapist or an occupational therapy assistant.

B. No person who is not licensed under this Chapter as an occupational therapist or an occupational therapy

assistant, or whose license has been suspended or revoked, who is not currently certified or registered by and in good standing with the NBCOT shall use, in connection with his name or place of business, the words "occupational therapist registered," "licensed occupational therapist registered," "certified occupational therapy assistant," or "licensed certified occupational therapy assistant" or the letters, "OTR," "LOTR," or "COTA," or "LCOTA" or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist registered or a certified occupational therapy assistant, or in any way, orally, in writing, in print, or by sign, directly or by implication, represent himself as such.

C. Whoever violates the provisions of this Section shall be fined not more than $500 or be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004), repromulgated LR 41:

§4931. Suspension and Revocation of License; Refusal to Issue or Renew; Unprofessional Conduct [Formerly 4921]

A. The board may refuse to issue or renew, may suspend or revoke, or many impose probationary conditions on any occupational therapy or occupational therapy assistant license, if the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or likely to endanger the health, welfare, or safety of the public.

B. As used herein and R.S. 37:3011, *unprofessional conduct* by an occupational therapist or occupational therapy assistant shall mean:

1. conviction of a crime or entry of a plea of guilty or nolo contendere to a criminal charge constituting a felony under the laws of Louisiana, of the United States, or of the state in which such conviction or plea was entered;

2. conviction of a crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or in connection with the practice of occupational therapy;

3. perjury, fraud, deceit, misrepresentation, or concealment of material facts in obtaining a license to practice occupational therapy;

4. providing false testimony before the board or providing false sworn information to the board;

5. habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence;

6. solicitation of patients or self-promotion through advertising or communication, public or private, which is fraudulent, false, deceptive, or misleading;

7. making or submitting false, deceptive, or unfounded claims, reports, or opinions to any patient, insurance company, or indemnity association, company, individual, or governmental authority for the purpose of obtaining anything of economic value;

8. cognitive or clinical incompetency;

9. continuing or recurring practice which fails to satisfy the prevailing and usually accepted standards of occupational therapy practice in this state;

10. knowingly performing any act which in any way assists an unlicensed person to practice occupational therapy, or having professional connection with or lending one's name to an illegal practitioner;

11. paying or giving anything of economic value to another person, firm, or corporation to induce the referral of patients to the occupational therapist or occupational therapy assistant;

12. interdiction by due process of law;

13. inability to practice occupational therapy with reasonable competence, skill, or safety to patients because of mental or physical illness, condition or deficiency, including but not limited to deterioration through the aging process and excessive use or abuse of drugs, including alcohol;

14. refusal to submit to examination an inquiry by an examining committee of physicians appointed by the board to inquire into the licensee's physical and/or mental fitness and ability to practice occupational therapy with reasonable skill or safety to patients;

15. practicing or otherwise engaging in any conduct or functions beyond the scope of occupational therapy as defined by the Act or these rules;

16. the refusal of the licensing authority of another state to issue or renew a license, permit, or certificate to practice occupational therapy in that state, or the revocation, suspension, or other restriction imposed on a license, permit, or certificate issued by such licensing authority which prevents, restricts, or conditions practice in that state, or the surrender of a license, permit, or certificate issued by another state when criminal or administrative charges are pending or threatened against the holder of such license, permit, or certificate;

17. violation of the code of ethics adopted and published by the American Occupational Therapy Association, Inc. (AOTA); or

18. violation of any rules and regulations of the board, or any provisions of the Act, as amended, R.S. 37:3001-3014.

C. Denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon a licensee may be ordered by the board in a decision made after a hearing in accordance with the Administrative Procedure Act and the applicable rules and regulations of the board. One year after the date of the revocation of a license, application may be made to the board for reinstatement. The board shall have discretion to accept or reject an application for reinstatement but shall hold a hearing to consider such reinstatement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3011.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:885 (September 1991), repromulgated LR 41:

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 not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

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 4:00 p.m., November 19, 2014.

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. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 24, 2014, at 11:00 o'clock a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Licensure, Certification and Practice; Occupational Therapists and Occupational Therapy Assistants

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

Other than one-time costs for notice and Rule publication estimated at a total of $2,578 in FY 15, it is not anticipated that the proposed Rule changes will result in any additional costs or savings to the board or other state or local governmental units. The Board of Medical Examiners proposes to amend its Rules governing the licensure, certification and practice of occupational therapists and occupational therapy assistants (LAC 46:XLV.Chapters 19 and 49), to update the Rules to reflect current board and professional practices, and to codify the rules to conform to policies and practices currently administered by the board.

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

There are no estimated effects on the board's revenue collections or that of any other state or local governmental unit anticipated from the proposed amendments.

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

The proposed Rule changes update definitions and practice standards, insert additional language provided in the law, and make technical changes to reflect current board and professional practices. The board does not anticipate that implementation of the proposed changes will result in any adverse costs and/or economic impact to occupational therapists, occupational therapy assistants, licensure applicants or any other non-governmental group. Consistent with national certification renewal cycle requirements, the proposed changes reduce the continuing professional education requirement from 15 to 12 hours for annual license renewal (§1965) and make the same change for license reinstatement (§1975). Due to the varying costs for obtaining continuing education program credits, the board is not in a position to estimate the cost-savings attributable to these proposed changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed changes will have any material impact on competition or employment in either the public or private sector.

Celia Mouton, M.D.	John D. Carpenter
Executive Director	Legislative Fiscal Officer
1410#046	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Medical Examiners

Physician Licensure and Practice; Telemedicine
(LAC 46:XLV.408 and Chapter 75)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana state Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, as amended by Act 442 of the 2014 Regular Session of the Louisiana Legislature, the board intends to amend its rules governing the use of telemedicine as to patients who are located in this state, LAC 46:XLV.408 and 7501 et seq. The proposed changes make substantive and technical modifications and update the rules generally as made necessary by the passage of time. Among other items, the proposed changes: address the need and requirements for obtaining a telemedicine permit (§408); revise the scope of the Subchapter (§7501); incorporate certain revised definitions (§7503); identify: the need for a physician-patient relationship; the applicable standard of care; and location of the participants to telemedicine services (§7505); identify conditions prerequisite to practicing telemedicine and required disclosures (§7507); revise the requirements for patient records (§7509); provide only secure communication technology shall be used for telemedicine (§7510); impose certain requirements and limitations on the prescription of controlled substances by telemedicine, and provide for certain exceptions (§7513).

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 2. Licensure and Certification
Chapter 3. Physicians
Subchapter H. Restricted Licensure, Permits
§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Requirement for Permit/Qualifications. A physician who does not maintain a physical practice location in this state shall not engage in the practice of medicine in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. To be eligible for a telemedicine permit an applicant shall:

1. - 2. ...

3. have completed a board-approved application and satisfied the applicable fee.

B. - C. ...

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. ...

2. a description of how telemedicine will be used and the primary location(s) from which it will be utilized by the applicant;

3. an affirmation acceptable to the board, in a format prescribed by the board, that the applicant has an arrangement with one or more physicians, who maintain a physical practice location in this state, to accept patients on referral and for follow-up care. To be acceptable to the board the:

a. affirmation must be endorsed by the physicians subject to the arrangement and contain such contact and other information as the board may prescribe;

b. physician(s) with whom such arrangement is made shall:

i. possess an unrestricted license to practice medicine issued by the board;

ii. not be the subject of any cause, action or investigation identified §408.B, which may provide the board cause to deny or refuse to issue a telemedicine permit; and

4. - 5. ...

6. a copy of the required disclosures to patients, identified in §7507 of these rules and such other information, acknowledgments and documentation as the board may require; and

7. a fee of $300. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

E. - F.3.b. ...

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or the last day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of $200.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009), amended LR 41:

Subpart 3. Practice
Chapter 75. Telemedicine
Subchapter A. General Provisions
§7501. Scope of Subchapter

A. The rules of this Subchapter govern the use of telemedicine by physicians licensed to practice medicine in this state and those who hold a telemedicine permit issued by the board to practice medicine in this state via telemedicine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009), amended LR 41:

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

* * *

In-Person Visit—a face-to-face evaluation conducted by a physician who is at the same physical location as the patient.

* * *

Physical Practice Location in this State—a clinic, facility, office or other location physically located in this state, where the physician spends the majority of his or her time practicing medicine.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or a telemedicine permit duly issued by the board.

Physician-Patient Relationship—physicians utilizing telemedicine shall establish a proper *physician-patient relationship* by:

a. verifying the identity of the individual requesting treatment. Appropriate contact and identifying information shall be made part of the medical record;

b. conducting an appropriate examination. The examination does not require an in-person visit if the technology is sufficient to provide the physician the pertinent clinical information reasonably necessary to practice at an acceptable level of skill and safety;

c. establishing a diagnoses through the use of accepted medical practices e.g., history, mental status, appropriate diagnostic and laboratory testing;

d. discussing the diagnoses and risks and benefits of various treatment options;

e. insuring the availability for appropriate follow-up care; and

f. creating and/or maintaining a medical record.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation, an electronic mail message between a physician and a patient, or a true consultation constitutes *telemedicine* for the purposes of this Part.

Telemedicine Permit—a permit issued by the board in accordance with §408 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7505. Patient Relationship; Standard of Care; Location of Participants

A. Physician-Patient Relationship. Telemedicine shall not be utilized by a physician with respect to any individual located in this state in the absence of a physician-patient relationship.

B. Standard of Care. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message, or a telephonic evaluation by questionnaire or otherwise, does not satisfy the standards of appropriate care.

C. Location of Participants. A physician using telemedicine may be at any location at the time the services are provided. A patient receiving medical services by telemedicine may be in any location in this state at the time that the services are received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7507. Prerequisite Conditions; Disclosures

A. The practice of medicine is deemed to occur at the location of the patient. Therefore, no physician shall utilize telemedicine to provide medical services to patients located in this state unless the physician:

1. holds an unrestricted Louisiana medical license and maintains a physical practice location within this state; or

2. holds a telemedicine permit and executes an affirmation, as describe in §408 of these rules, that he or she has an arrangement with one or more other physicians who maintain a physical practice location in this state to provide for referrals and follow-up care.

B. A physician utilizing telemedicine with respect to patients located in this state shall have:

1. access to the patient's medical record;

2. if required by the standard of care applicable to the diagnosis or treatment of the patient's complaints in a traditional (face-to-face) setting, the ability:

a. to utilize peripherals (such as otoscope and stethoscope);

b. to obtain diagnostic testing;

c. if necessary in the physician's judgment, to access a patient presenter to assist with the telemedicine encounter; and

d. to conduct an in-person visit, or refer the patient to another physician for that purpose.

C. Disclosures. Prior to utilizing telemedicine a physician shall insure that the following disclosures have been made to the patient and documented in the medical record. Such disclosures need not be made or documented more than once, except to update the information provided:

1. the name, Louisiana medical license number and contact information (address, telephone number(s) and e-mail address) of the physician;

2. the physician's specialty or area of practice;

3. how to receive follow-up and emergency care;

4. how to obtain copies of medical records and/or insure transmission to another medical provider;

5. how to receive care in the event of a technology or equipment failure; and

6. notification of privacy practices concerning individually identifiable health information, consistent with state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7509. Patient Records

A. Patient records shall be:

1. created and maintained for every telemedicine visit according to the same standards of care as in an in-person visit;

2. confidential and subject to all applicable state and federal laws and regulations relative to privacy and security of health information;

3. accessible by a patient and the physician consistent with all state and federal laws and regulations; and

4. made immediately available to the patient or a physician to whom the patient may be referred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009), amended LR 41:

§7510. Privacy and Security

A. Only secure communication technology shall be used for telemedicine. At a minimum, telemedicine technology shall comply with all state and federal laws and regulations for medical/health information privacy and security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§7513. Prohibitions

A. No physician shall authorize or order the prescription, dispensation or administration of any controlled substance or other drug by telemedicine other than in compliance with the rules of this Chapter and all state and federal laws and regulations.

B. No physician shall utilize telemedicine:

1. - 2. ...

3. to authorize or order the prescription, dispensation or administration of any medication classified as a Schedule II controlled substance or an amphetamine or opioid of any schedule;

4. to authorize or order the prescription, dispensation or administration of any controlled substance (other than a Schedule II controlled substance or an amphetamine or opioid) unless the physician has had at least one in-person visit with the patient at a physical practice location in this state within the past year.

C. Exceptions. The following exceptions are recognized to the prohibitions set forth in §7513.B.3 and/or §7513.B.4.

1. Amphetamines. The prohibition against the prescription of an amphetamine and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist who prescribes amphetamines in the treatment of his or her patients suffering from attention deficit hyperactivity disorder (ADHD), provided all of the following conditions are satisfied:

a. the patient is under the age of 18;

b. the patient is being treated at a clinic or facility operated by the state of Louisiana or a behavioral health center operated by the department or a local governmental entity;

c. there is a policy in place for referral for an in-person visit with a primary care physician in this state if deemed necessary by the psychiatrist; and

d. such is permitted by and in conformity with all applicable state and federal laws and regulations including, but not limited to, the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Pub. L. 110-425) and any corresponding regulations that may be adopted by the United States Drug Enforcement Administration.

2. Buprenorphine-Naloxone Preparations. The prohibition against the prescription of an opioid shall not apply to a psychiatrist who is board certified in the subspecialty of addictive medicine from using buprenorphine-naloxone preparations in the treatment of an addictive disorder, provided all of the following conditions are satisfied:

a. the patient is being treated at a physician's office or addiction treatment center within this state;

b. the patient has had at least one in-person visit with the addiction medicine specialist within the past six months;

c. there is a policy in place for referral for an in-person visit with a physician in this state if deemed necessary by the addiction medicine specialist; and

d. such is permitted by and in conformity with all applicable state and federal laws and regulations.

D. A physician who practices telemedicine by virtue of a telemedicine permit issued by the board shall not:

D.1. - E. ….

F. No physician shall utilize telemedicine to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009), amended LR 41:

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 not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below 100 percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment 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., November 19, 2014.

Public Hearing

If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 24, 2014, at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held. 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.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Physician Licensure and Practice; Telemedicine

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

Other than one-time costs for notice and rule publication estimated at a total of $1,156 in FY 15, it is not anticipated that the proposed rule changes will result in any additional costs or savings to the board or other state or local governmental units. The board anticipates devoting some existing administrative staff resources to processing portions of telemedicine permit applications/renewals (for physicians who do not maintain a physical practice location in this state); affirming an arrangement with another physician(s) who maintains a physical practice location in Louisiana to accept patients for referral/follow-up care; and requiring a copy of the physician's written disclosures to patients. Because the number of current permit holders is small, and the anticipated total of those who

may seek a permit is believed to be relatively modest, these portions of the applications will be processed within existing systems for permit issuance/renewal. The board anticipates it can absorb the projected modest increase in administrative workload with existing personnel and resources. The proposed Rule changes are necessary to conform the board's existing telemedicine Rules to Act 442 of the 2014 Regular Session of the Louisiana Legislature, to update the Rules generally and incorporate substantive and technical changes made necessary by the passage of time.

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

Implementation of the proposed changes will generate additional fees of $150 for issuance of an initial telemedicine permit and $100 for permit renewal. Twenty-five physicians currently hold telemedicine permits. The board anticipates these permits will be renewed in the current fiscal year. While the board has no reliable data, 30 new applicants for a telemedicine permit are projected in the current fiscal year and for each of the next several years. It is estimated that additional agency revenue from initial/renewal telemedicine permits will total: $7,000 for FY 2015 (30 new permits x $150 = $4,500, 25 renewal permits x $100 = $2,500. Total additional revenues = $7,000); $10,000 in FY 16 (30 new permits x $150 = $4,500, 55 renewal permits x $100 = $5,500. Total additional revenues = $10,000); and $13,000 in FY 17 (30 new permits x $150 = $4,500, 85 renewal permits x $100 = $8,500. Total additional revenues = $13,000). The board does not anticipate an appreciable increase in the number of new applicants in forthcoming years. Additional annual revenues will be utilized to off-set the board's general operating expenses.

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

The proposed changes will affect: out-of-state physicians who already possess a telemedicine permit to the extent that any do not already have a referral arrangement with a physician who maintains a physical practice location in this state; all physicians who use telemedicine technology which does not comply with state and federal laws and regulations for medical/health information privacy and security; and, potentially those that prescribe certain types of controlled substances by telemedicine. The current fees for permit issuance/renewal are $150/$100, respectively. The proposed changes will increase fees to $300 at issuance and $200 at renewal. The proposed changes remove the requirements for support staff and the presence of a licensed health care professional with the patient during all telemedicine encounters.

Because there is no information or data available either as to the number of physicians who utilize telemedicine in their practice or the extent to which those that may/may not already comply with the proposed changes, it is not possible to estimate the proposed changes' impact in these respects. To an extent not quantifiable, the public will receive an economic benefit by enhanced access to medical services via telemedicine from both Louisiana-licensed physicians and out-of-state physicians possessing a telemedicine permit. The proposed changes may also, to an extent not quantifiable, increase receipts and/or income of physicians who utilize telemedicine.

The proposed rules also require physicians to disclose privacy and other practices to new patients in a format specified by the board. It is believed that most physicians already use some form of disclosure that would substantially satisfy most if not all of the required information. Therefore, the board does not anticipate that this requirement will have a material effect on paperwork or workload on affected physicians.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed changes may, to an extent not quantifiable, have a positive impact on competition or employment in either the public or private sector.

Celia Mouton, M.D.	John D. Carpenter
Executive Director	Legislative Fiscal Officer
1410#048	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Board of Medical Examiners

Physician Practice; Unprofessional Conduct
(LAC 46:XLV.7603)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, the board intends to amend its rules governing unprofessional conduct of physicians, LAC 46:XLV.7603. The proposed changes require that any physician holding herself or himself out as a specialist have completed accredited residency or fellowship training in the claimed area of specialization, and limit self-treatment and treatment of immediate family members with controlled substances to cases of an emergency.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 76. Definition of Enforcement Terms
Subchapter B. Unprofessional Conduct
§7603. Unprofessional Conduct

A. - A.8.b. ...

9. *Failing to Adhere to Accepted Practices; Misleading Practices*—a physician shall:

a. practice within the scope of his or her education, training and experience; and

b. not hold himself or herself out as a specialist in an area of medical practice unless the physician has successfully completed a residency or fellowship training program, which is accredited by the American Council on Graduate Medical Education of the American Medical Association, the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.

10.a. - 10.f. ...

11. *Self-Treatment; Treatment of Immediate Family Members*—except in cases of emergency, physicians shall not prescribe controlled substances for themselves or their immediate family members. As respects a physician, *immediate family members* include the physician's spouse, children, parents, and siblings.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011), amended LR 41:

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 not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below 100 percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment 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., November 19, 2014.

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. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 24, 2014, at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Physician Practice; Unprofessional Conduct

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

Other than one-time costs for notice and rule publication estimated at a total of $292 in FY 15, it is not anticipated that the proposed Rule change will result in any additional costs or savings to the board or other state or local governmental units. The proposed Rule change clarifies unprofessional conduct with regard to claiming oneself as a specialist without the requisite accredited residency or fellowship training and with regard to the prescribing of controlled dangerous substances to oneself or one's immediate family member except in cases of emergency.

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

There is no anticipated effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit as a result of the proposed amendments.

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

Any physician who: holds herself or himself out as a *specialist* but has not completed accredited residency or fellowship training in the claimed area of specialized medical practice; or treats her or his immediate family members or herself/himself with controlled substances, other than in an emergency, would be directly affected by the proposed amendments and may experience an increase in costs and/or decrease in revenue to an extent that is not quantifiable. It is not possible to estimate the impact of the proposed changes in these respects as no information or data is available as to the number of physicians who hold themselves out as a specialist but do not have accredited residency training or who prescribe controlled substances to their immediate family or themselves in other than an emergency situation. The board does not anticipate that the changes will have a material effect on paperwork or workload on affected physicians.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed amendments will have any significant impact on competition or employment in either the public or private sector.

Celia Mouton, M.D.	John D. Carpenter
Executive Director	Legislative Fiscal Officer
1410#047	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Crisis Receiving Centers
Licensing Standards
(LAC 48:I.Chapters 53 and 54)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to adopt LAC 48:I.Chapters 53 and 54 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:2180.14. 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 Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions to establish licensing standards for Level III crisis receiving centers (CRCs) in order to provide intervention and crisis stabilization services for individuals who are experiencing a behavioral health crisis (*Louisiana Register*, Volume 39, Number 4).

The department promulgated an Emergency Rule which amended the provisions of the April 20, 2013 Emergency Rule in order to clarify the provisions governing the licensing standards for free-standing CRCs (*Louisiana Register*, Volume 40, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 20, 2014 Emergency Rule.

Title 48
PUBLIC HEALTH—GENERAL
Part 1. General Administration
Subpart 3. Licensing and Certification
Chapter 53. Level III Crisis Receiving Centers
Subchapter A. General Provisions
§5301. Introduction

A. The purpose of this Chapter is to:

1. provide for the development, establishment, and enforcement of statewide licensing standards for the care of patients and clients in Level III crisis receiving centers (CRCs);

2. ensure the maintenance of these standards; and

3. regulate conditions in these facilities through a program of licensure which shall promote safe and adequate treatment of clients of behavioral health facilities.

B. The purpose of a CRC is to provide intervention and stabilization services in order for the client to achieve stabilization and be discharged and referred to the lowest appropriate level of care that meets the client's needs. The estimated length of stay in a CRC is 3-7 days.

C. In addition to the requirements stated herein, all licensed CRCs shall comply with applicable local, state, and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5303. Definitions

Active Client—a client of the CRC who is currently receiving services from the CRC.

Administrative Procedure Act—R.S. 49:950 et seq.

Administrative Review—Health Standards Section's review of documentation submitted by the center in lieu of an on-site survey.

Adult—a person that is at least 18 years of age.

Authorized Licensed Prescriber—a physician or nurse practitioner licensed in the state of Louisiana and with full prescriptive authority authorized by the CRC to prescribe treatment to clients of the specific CRC at which he/she practices.

Building and Construction Guidelines—structural and design requirements applicable to a CRC; does not include occupancy requirements.

Coroner's Emergency Certificate (CEC)—a certificate issued by the coroner pursuant to R.S. 28:53.3.

Change of Ownership (CHOW)—the sale or transfer, whether by purchase, lease, gift or otherwise, of a CRC by a person/corporation of controlling interest that results in a change of ownership or control of 30 percent or greater of either the voting rights or assets of a CRC or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the CRC.

CLIA—Clinical Laboratory Improvement Amendment.

Client Record—a single complete record kept by the CRC which documents all treatment provided to the client. The record may be electronic, paper, magnetic material, film or other media.

Construction Documents—building plans and specifications.

Contraband—any object or property that is against the CRC's policies and procedures to possess.

Level III Crisis Receiving Center (or Center or CRC)—an agency, business, institution, society, corporation, person or persons, or any other group, licensed by the Department of Health and Hospitals to provide crisis identification, intervention and stabilization services for people in behavioral crisis. A CRC shall be no more than 24 beds.

Crisis Receiving Services—services related to the treatment of people in behavioral crisis, including crisis identification, intervention and stabilization.

Department—the Louisiana Department of Health and Hospitals.

Direct Care Staff—any member of the staff, including an employee or contractor, that provides the services delineated in the comprehensive treatment plan. Food services, maintenance and clerical staff and volunteers are not considered as direct care staff.

Disaster or Emergency—a local, community-wide, regional or statewide event that may include, but is not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

Division of Administrative Law (DAL)—The Louisiana Department of State Civil Service, Division of Administrative Law or its successor entity.

Grievance—a formal or informal written or verbal complaint that is made to the CRC by a client or the client's family or representative regarding the client's care, abuse or neglect when the complaint is not resolved at the time of the complaint by staff present.

HSS—the Department of Health and Hospitals, Office of the Secretary, Office of Management and Finance, Health Standards Section.

Human Services Field—an academic program with a curriculum content in which at least 70 percent of the required courses for the major field of study are based upon the core mental health disciplines.

Licensed Mental Health Professional (LMHP)—an individual who is licensed in the State of Louisiana to diagnose and treat mental illness or substance abuse, acting within the scope of all applicable State laws and their professional license. A LMHP must be one of the following individuals licensed to practice independently:

1. a physician/psychiatrist;
2. a medical psychologist;
3. a licensed psychologist;
4. a licensed clinical social worker (LCSW);
5. a licensed professional counselor (LPC);
6. a licensed marriage and family therapist (LMFT);
7. a licensed addiction counselor (LAC);
8. an advanced practice registered nurse or APRN (must be a nurse practitioner specialist in adult psychiatric and mental health or family psychiatric and mental health);
9. a certified nurse specialist in one of the following:
   a. psychosocial, gerontological psychiatric mental health;

b. adult psychiatric and mental health; or

c. child-adolescent mental health.

LSBME—Louisiana State Board of Medical Examiners.

MHERE–Mental Health Emergency Room Extension operating as a unit of a currently-licensed hospital.

Minor—a person under the age of 18.

OBH—the Department of Health and Hospitals, Office of Behavioral Health.

On Duty—scheduled, present, and awake at the site to perform job duties.

On Call—immediately available for telephone consultation and less than one hour from ability to be on duty.

OHSEP—Office of Homeland Security and Emergency Preparedness.

OPC—Order for Protective Custody issued pursuant to R.S. 28:53.2.

OSFM—the Louisiana Department of Public Safety and Corrections, Office of State Fire Marshal.

PEC—an emergency certificate executed by a physician, psychiatric mental health nurse practitioner, or psychologist pursuant to R.S. 28:53.

Physician—an individual who holds a medical doctorate or a doctor of osteopathy from a medical college in good standing with the LSBME and a license, permit, certification, or registration issued by the LSBME to engage in the practice of medicine in the state of Louisiana.

Qualifying Experience—experience used to qualify for any position that is counted by using one year equals 12 months of full-time work.

Seclusion Room—a room that may be secured in which one client may be placed for a short period of time due to the client's increased need for security and protection.

Shelter in Place—when a center elects to stay in place rather than evacuate when located in the projected path of an approaching storm equal to or greater than tropical storm strength.

Sleeping Area—a single constructed room or area that contains a minimum of three individual beds.

Tropical Storm Strength—a tropical cyclone in which the maximum sustained surface wind speed (using the U.S. 1 minute average standard) ranges from 34 kt (39 mph 17.5 m/s) to 63 kt (73 mph 32.5 mps).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter B. Licensing

§5309. General Licensing Provisions

A. All entities providing crisis receiving services shall be licensed by the Department of Health and Hospitals (DHH). It shall be unlawful to operate as a CRC without a license issued by the department. DHH is the only licensing authority for CRCs in Louisiana.

B. A CRC license authorizes the center to provide crisis receiving services.

C. The following entities are exempt from licensure under this Chapter:

1. community mental health centers;
2. hospitals;
3. nursing homes;
4. psychiatric rehabilitative treatment facilities;
5. school-based health centers;
6. therapeutic group homes;
7. HCBS agencies;
8. substance abuse/addictive disorder facilities;
9. mental health clinics;
10. center-based respites;
11. MHEREs;
12. individuals certified by OBH to provide crisis intervention services; and
13. federally-owned facilities.

D. A CRC license is not required for individual or group practice of LMHPs providing services under the auspices of their individual professional license(s).

E. A CRC license shall:

1. be issued only to the person or entity named in the license application;
2. be valid only for the CRC to which it is issued and only for the geographic address of that CRC approved by DHH;
3. be valid for up to one year from the date of issuance, unless revoked, suspended, or modified prior to that date, or unless a provisional license is issued;
4. expire on the expiration date listed on the license, unless timely renewed by the CRC;
5. be invalid if sold, assigned, donated or transferred, whether voluntary or involuntary; and
6. be posted in a conspicuous place on the licensed premises at all times.

F. In order for the CRC to be considered operational and retain licensed status, the following applicable operational requirements shall be met. The CRC shall:

1. be open and operating 24 hours per day, 7 days per week;
2. have the required staff on duty at all times to meet the needs of the clients; and
3. be able to screen and either admit or refer all potential clients at all times.

G. The licensed CRC shall abide by any state and federal law, rule, policy, procedure, manual or memorandum pertaining to crisis receiving centers.

H. The CRC shall permit designated representatives of the department, in the performance of their duties, to:

1. inspect all areas of the center's operations; and
2. conduct interviews with any staff member, client, or other person as necessary.

I. CRC Names

1. A CRC is prohibited from using:

a. the same name as another CRC;

b. a name that resembles the name of another center;

c. a name that may mislead the client or public into believing it is owned, endorsed, or operated by the state of Louisiana when it is not owned, endorsed, or operated by the state of Louisiana.

J. Plan Review

1. Any entity that intends to operate as a CRC, except one that is converting from a MHERE or an existing CRC, shall complete the plan review process and obtain approval for its construction documents for the following types of projects:

a. new construction;

b. any entity that intends to operate and be licensed as a CRC in a physical environment that is not currently licensed as a CRC; or

c. major alterations.

2. The CRC shall submit one complete set of construction documents with an application and review fee to the OSFM for review. Plan review submittal to the OSFM shall be in accordance with R.S. 40:1574, and the current *Louisiana Administrative Code (LAC)* provisions governing fire protection for buildings (LAC 55:V.Chapter 3 as of this promulgation), and the following criteria:

a. any change in the type of license shall require review for requirements applicable at the time of licensing change;

b. requirements applicable to occupancies, as defined by the most recently state-adopted edition of *National Fire Protection Association (NFPA) 101*, where services or treatment for four or more patients are provided;

c. requirements applicable to construction of business occupancies, as defined by the most recently state-adopted edition of NFPA 101; and

d. the specific requirements outlined in the Physical Environment requirements of this Chapter.

3. Construction Document Preparation

a. The CRC's construction documents shall be prepared by a Louisiana licensed architect or licensed engineer as governed by the licensing laws of the state for the type of work to be performed.

b. The CRC's construction documents shall be of an architectural or engineering nature and thoroughly illustrate an accurately drawn and dimensioned project that contains noted plans, details, schedules and specifications.

c. The CRC shall submit at least the following in the plan review process:

i. site plans;

ii. floor plan(s). These shall include architectural, mechanical, plumbing, electrical, fire protection, and if required by code, sprinkler and fire alarm plans;

iii. building elevations;

iv. room finish, door, and window schedules;

v. details pertaining to Americans with Disabilities Act (ADA) requirements; and

vi. specifications for materials.

4. Upon OSFM approval, the CRC shall submit the following to DHH:

a. the final construction documents approved by OSFM; and

b. OSFM's approval letter.

K. Waivers

1. The secretary of DHH may, within his/her sole discretion, grant waivers to building and construction guidelines which are not part of or otherwise required under the provisions of the State Sanitary Code.

2. In order to request a waiver, the CRC shall submit a written request to HSS that demonstrates:

a. how patient safety and quality of care offered is not comprised by the waiver;

b. the undue hardship imposed on the center if the waiver is not granted; and

c. the center's ability to completely fulfill all other requirements of service.

3. DHH will make a written determination of each waiver request.

4. Waivers are not transferable in an ownership change or geographic change of location, and are subject to review or revocation upon any change in circumstances related to the waiver.

5. DHH prohibits waivers for new construction.

L. A person or entity convicted of a felony or that has entered a guilty plea or a plea of nolo contendere to a felony is prohibited from being the CRC or owner, clinical supervisor or any managing employee of a CRC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5311. Initial Licensure Application Process

A. Any entity, organization or person interested in operating a crisis receiving center must submit a completed initial license application packet to the department for approval. Initial CRC licensure application packets are available from HSS.

B. A person/entity/organization applying for an initial license must submit a completed initial licensing application packet which shall include:

1. a completed CRC licensure application;

2. the non-refundable licensing fee as established by statute;

3. the approval letter of the architectural center plans for the CRC from OSFM, if the center must go through plan review;

4. the on-site inspection report with approval for occupancy by the OSFM, if applicable;

5. the health inspection report from the Office of Public Health (OPH);

6. a statewide criminal background check, including sex offender registry status, on all owners and managing employees;

7. except for governmental entities or organizations, proof of financial viability, comprised of the following:

a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least $100,000;

b. general and professional liability insurance of at least $500,000; and

c. worker's compensation insurance;

8. an organizational chart and names, including position titles, of key administrative personnel and the governing body;

9. a legible floor sketch or drawing of the premises to be licensed;

10. a letter of intent indicating whether the center will serve minors or adults and the center's maximum number of beds;

11. if operated by a corporate entity, such as a corporation or an limited liability corporation (LLC), current proof of registration and status with the Louisiana Secretary of State's Office;

12. a letter of recommendation from the OBH regional office or its designee; and

13. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant shall:

1. be notified of the missing information; and

2. be given 90 days from receipt of the notification to submit the additional requested information or the application will be closed.

D. Once the initial licensing application is approved by DHH, notification of such approval shall be forwarded to the applicant.

E. The applicant shall notify DHH of initial licensing survey readiness within the required 90 days of receipt of application approval. If an applicant fails to notify DHH of initial licensing survey readiness within 90 days, the application will be closed.

F. If an initial licensing application is closed, an applicant who is still interested in operating a CRC must submit a:

1. new initial licensing packet; and

2. non-refundable licensing fee.

G. Applicants must be in compliance with all appropriate federal, state, departmental or local statutes, laws, ordinances, rules, regulations and fees before the CRC will be issued an initial license to operate.

H. An entity that intends to become a CRC is prohibited from providing crisis receiving services to clients during the initial application process and prior to obtaining a license, unless it qualifies as one of the following facilities:

1. a hospital-based CRC;

2. an MHERE;

3. an MHERE that has communicated its intent to become licensed as a CRC in collaboration with the department prior to February 28, 2013; or

4. a center-based respite.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5313. Initial Licensing Surveys

A. Prior to the initial license being issued, an initial licensing survey shall be conducted on-site to ensure compliance with the licensing laws and standards.

B. If the initial licensing survey finds that the center is compliant with all licensing laws, regulations and other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center.

C. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, that present a potential threat to the health, safety, or welfare of the clients, the department shall deny the initial license.

D. In the event that the initial licensing survey finds that the center is noncompliant with any licensing laws or regulations, or any other required rules or regulations, and the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients, the department:

1. may issue a provisional initial license for a period not to exceed six months; and

2. shall require the center to submit an acceptable plan of correction.

a. The department may conduct a follow-up survey following the initial licensing survey after receipt of an acceptable plan of correction to ensure correction of the deficiencies. If all deficiencies are corrected on the follow-up survey, a full license will be issued.

b. If the center fails to correct the deficiencies, the initial license may be denied.

E. The initial licensing survey of a CRC shall be an announced survey. Follow-up surveys to the initial licensing surveys are unannounced surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5315. Types of Licenses

A. The department has the authority to issue the following types of licenses:

1. Initial License

a. The department shall issue a full license to the CRC when the initial licensing survey indicates the center is compliant with:

i. all licensing laws and regulations;

ii. all other required statutes, laws, ordinances, rules, regulations; and

iii. fees.

b. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, or suspended.

2. Provisional Initial License

a. The department may issue a provisional initial license to the CRC when the initial licensing survey finds that the CRC is noncompliant with any licensing laws or regulations or any other required statutes, laws, ordinances, rules, regulations or fees, but the department determines that the noncompliance does not present a threat to the health, safety or welfare of the clients.

i. The center shall submit a plan of correction to the department for approval, and the center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

ii. If all such noncompliance or deficiencies are corrected on the follow-up survey, a full license will be issued.

iii. If all such noncompliance or deficiencies are not corrected on the follow-up survey, or new deficiencies affecting the health, safety or welfare of a client are cited, the provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and the appropriate licensing fee.

3. Renewal License. The department may issue a renewal license to a licensed CRC that is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional License. The department may issue a provisional license to a licensed CRC for a period not to exceed six months.

a. A provisional license may be issued for the following reasons:

i. more than five deficiencies cited during any one survey;

ii. four or more validated complaints in a consecutive 12-month period;

iii. a deficiency resulting from placing a client at risk for serious harm or death;

iv. failure to correct deficiencies within 60 days of notification of such deficiencies, or at the time of a follow-up survey; or

v. failure to be in substantial compliance with all applicable federal, state, departmental and local statutes, laws, ordinances, rules regulations and fees at the time of renewal of the license.

b. The department may extend the provisional license for an additional period not to exceed 90 days in order for the center to correct the deficiencies.

c. The center shall submit an acceptable plan of correction to DHH and correct all noncompliance or deficiencies prior to the expiration of the provisional license.

d. The department shall conduct a follow-up survey of the CRC, either on-site or by administrative review, prior to the expiration of the provisional license.

e. If the follow-up survey determines that the CRC has corrected the deficiencies and has maintained compliance during the period of the provisional license, the department may issue a license that will expire on the expiration date of the most recent renewal or initial license.

f. The provisional license shall expire if:

i. the center fails to correct the deficiencies by the follow-up survey; or

ii. the center is cited with new deficiencies at the follow-up survey indicating a risk to the health, safety, or welfare of a client.

g. If the provisional license expires, the center shall be required to begin the initial licensing process by submitting a:

i. new initial license application packet; and

ii. non-refundable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5317. Changes in Licensee Information or Personnel

A. Within five days of the occurrence, the CRC shall report in writing to HSS the following changes to the:

1. CRC's entity name;
2. business name;
3. mailing address; or
4. telephone number;

B. Any change to the CRC's name or "doing business as name requires a $25 nonrefundable fee for the issuance of an amended license with the new name.

C. A CRC shall report any change in the CRC's key administrative personnel within five days of the change.

1. Key administrative personnel include the:
   a. CRC manager;
   b. clinical director; and
   c. nurse manager.
2. The CRC's notice to the department shall include the incoming individual's:
   a. name;
   b. date of appointment to the position; and
   c. qualifications.

D. Change of Ownership (CHOW)

1. A CRC shall report a CHOW in writing to the department at least five days prior to the change. Within five days following the change, the new owner shall submit;
   a. the legal CHOW document;
   b. all documents required for a new license; and
   c. the applicable nonrefundable licensing fee.
2. A CRC that is under license revocation, provisional licensure, or denial of license renewal may not undergo a CHOW.
3. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

E. Change in Physical Address

1. A CRC that intends to change the physical address of its geographic location shall submit:
   a. a written notice to HSS of its intent to relocate;
   b. a plan review request;
   c. a new license application;
   d. a nonrefundable license fee; and
   e. any other information satisfying applicable licensing requirements.
2. In order to receive approval for the change of physical address, the CRC must:
   a. have a plan review approval;
   b. have approval from OSFM and OPH recommendation for license;
   c. have an approved license application packet;
   d. be in compliance with other applicable licensing requirements; and
   e. have an on-site licensing survey prior to relocation of the center.
3. Upon approval of the requirements for a change in physical address, the department shall issue a new license to the CRC.

F. Any request for a duplicate license shall be accompanied by a $25 fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5319. Renewal of License

A. A CRC license expires on the expiration date listed on the license, unless timely renewed by the CRC.

B. To renew a license, the CRC shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the current license. The license renewal application packet includes:

1. the license renewal application;
2. a current State Fire Marshal report;
3. a current OPH inspection report;
4. the non-refundable license renewal fee;
5. any other documentation required by the department; and
6. except for governmental entities or organizations, proof of financial viability, comprised of the following:
   a. a line of credit issued from a federally insured, licensed lending institution in the amount of at least $100,000;
   b. general and professional liability insurance of at least $500,000; and
   c. worker's compensation insurance.

C. The department may perform an on-site survey and inspection of the center upon renewal.

D. Failure to submit a completed license renewal application packet prior to the expiration of the current

license will result in the voluntary non-renewal of the CRC license upon the license's expiration.

E. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the center.

F. If a licensed CRC has been issued a notice of license revocation or suspension, and the center's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

G. Voluntary Non-Renewal of a License

1. If a center fails to timely renew its license, the license:

a. expires on the license's expiration date; and

b. is considered a non-renewal and voluntarily surrendered.

2. There is no right to an administrative reconsideration or appeal from a voluntary surrender or non-renewal of the license.

3. If a center fails to timely renew its license, the center shall immediately cease providing services, unless the center is actively treating clients, in which case the center shall:

a. within two days of the untimely renewal, provide written notice to HSS of the number of clients receiving treatment at the center;

b. within two days of the untimely renewal, provide written notice to each active client's prescribing physician and to every client, or, if applicable, the client's parent or legal guardian, of the following:

i. voluntary non-renewal of license;

ii. date of closure; and

iii. plans for the transition of the client;

c. discharge and transition each client in accordance with this Chapter within 15 days of the license's expiration date; and

d. within 30 days of the license's expiration date, notify HSS of the location where records will be stored in compliance with federal and state laws and the name, address, and phone number of the person responsible for the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5321. Licensing Surveys

A. The department may conduct periodic licensing surveys and other surveys as deemed necessary to ensure compliance with all laws, rules and regulations governing crisis receiving centers and to ensure client health, safety and welfare. These surveys may be conducted on-site or by administrative review and shall be unannounced.

B. If deficiencies are cited, the department may require the center to submit an acceptable plan of correction.

C. The department may conduct a follow-up survey following any survey in which deficiencies were cited to ensure correction of the deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5323. Complaint Surveys

A. Pursuant to R.S. 40:2009.13 et seq., the department has the authority to conduct unannounced complaint surveys on crisis receiving centers.

B. The department shall issue a statement of deficiency to the center if it finds a deficiency during the complaint survey.

C. Plan of Correction

1. Once the department issues a statement of deficiencies, the department may require the center to submit an acceptable plan of correction.

2. If the department determines that other action, such as license revocation, is appropriate, the center:

a. may not be required to submit a plan of correction; and

b. will be notified of such action.

D. Follow-up Surveys

1. The department may conduct a follow-up survey following a complaint survey in which deficiencies were cited to ensure correction of the deficient practices.

2. If the department determines that other action, such as license revocation, is appropriate:

a. a follow-up survey is not necessary; and

b. the center will be notified of such action.

E. Informal Reconsiderations of Complaint Surveys

1. A center that is cited with deficiencies found during a complaint survey has the right to request an informal reconsideration of the deficiencies. The center's written request for an informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

2. An informal reconsideration for a complaint survey or investigation shall be conducted by the department as a desk review.

3. Correction of the violation or deficiency shall not be the basis for the reconsideration.

4. The center shall be notified in writing of the results of the informal reconsideration.

5. Except for the right to an administrative appeal provided in R.S. 40:2009.16, the informal reconsideration shall constitute final action by the department regarding the complaint survey, and there shall be no further right to an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5325. Statement of Deficiencies

A. The CRC shall make any statement of deficiencies available to the public upon request after the center submits a plan of correction that is accepted by the department or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

B. Informal Reconsiderations

1. Unless otherwise provided in statute or in this Chapter, a CRC has the right to an informal reconsideration of any deficiencies cited as a result of a survey.

2. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

3. The center's written request for informal reconsideration must be received by HSS within 10 calendar days of the center's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. HSS shall notify the center in writing of the results of the informal reconsideration.

6. Except as provided pursuant to R.S. 40:2009.13 et seq., and as provided in this Chapter:

a. the informal reconsideration decision is the final administrative decision regarding the deficiencies; and

b. there is no right to an administrative appeal of such deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5327. Cessation of Business

A. Except as provided in §5407 of these licensing regulations, a license shall be immediately null and void if a provider ceases to operate.

B. A cessation of business is deemed to be effective the date on which the provider stopped offering or providing services to the community.

C. Upon the cessation of business, the provider shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the provider. The provider does not have a right to appeal a cessation of business.

E. A CRC that intends to cease operations shall:

1. provide 30 days advance written notice to HSS and the active client, or if applicable, the client's parent(s), legal guardian, or designated representative; and

2. discharge and transition all clients in accordance with this Chapter.

F. The provider shall notify the department in writing 30 days prior to the effective date of the closure or cessation. In addition to the notice, the provider shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure;

2. provisions that comply with federal and state laws on storage, maintenance, access, and confidentiality of the closed provider's patients medical records;

3. an appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction;

4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 days prior to the effective date of closure.

G. If a CRC fails to follow these procedures, the department may prohibit the owners, managers, officers, directors, and/or administrators from opening, managing, directing, operating, or owning a CRC for a period of two years.

H. Once the provider has ceased doing business, the provider shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5329. Sanctions

A. The department may issue sanctions for deficiencies and violations of law, rules and regulations that may include, but are not limited to:

1. civil fines;
2. directed plans of correction;
3. provisional licensure; and/or
4. license revocation or denial of license renewal.

B. The department may deny an application for an initial license or a license renewal, or may revoke a license in accordance with the Administrative Procedure Act.

C. The department may deny an initial license, revoke a license or deny a license renewal for any of the following reasons, including but not limited to:

1. failure to be in compliance with the CRC licensing laws, rules and regulations;

2. failure to be in compliance with other required statutes, laws, ordinances, rules or regulations;

3. failure to comply with the terms and provisions of a settlement agreement or education letter;

4. cruelty or indifference to the welfare of the clients;

5. misappropriation or conversion of the property of the clients;

6. permitting, aiding or abetting the unlawful, illicit or unauthorized use of drugs or alcohol within the center of a program;

7. documented information of past or present conduct or practices of an employee or other staff which are detrimental to the welfare of the clients, including but not limited to:

a. illegal activities; or

b. coercion or falsification of records;

8. failure to protect a client from a harmful act of an employee or other client including, but not limited to:

a. mental or physical abuse, neglect, exploitation or extortion;

b. any action posing a threat to a client's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

f. criminal activity;

9. failure to notify the proper authorities, as required by federal or state law or regulations, of all suspected cases of the acts outlined in Subsection D.8 above;

10. knowingly making a false statement in any of the following areas, including but not limited to:

a. application for initial license or renewal of license;

b. data forms;

c. clinical records, client records or center records;

d. matters under investigation by the department or the Office of the Attorney General; or

e. information submitted for reimbursement from any payment source;

11. knowingly making a false statement or providing false, forged or altered information or documentation to DHH employees or to law enforcement agencies;

12. the use of false, fraudulent or misleading advertising; or

13. the CRC, an owner, officer, member, manager, administrator, Medical Director, managing employee, or clinical supervisor has pled guilty or nolo contendere to a felony, or is convicted of a felony, as documented by a certified copy of the record of the court;

14. failure to comply with all reporting requirements in a timely manner, as required by the department;

15. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or clients;

16. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

17. failure to allow or refusal to allow access to center or client records by authorized departmental personnel;

18. bribery, harassment, intimidation or solicitation of any client designed to cause that client to use or retain the services of any particular CRC;

19. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment;

20. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department; or

21. failure to uphold client rights that may have resulted or may result in harm, injury or death of a client.

D. If the department determines that the health and safety of a client or the community may be at risk, the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal. The department will provide written notification to the center if the imposition of the action will be immediate.

E. Any owner, officer, member, manager, director or administrator of such CRC is prohibited from owning, managing, directing or operating another CRC for a period of two years from the date of the final disposition of any of the following:

1. license revocation;
2. denial of license renewal; or
3. the license is surrendered in lieu of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5331. Notice and Appeal of License Denial, License Revocation and Denial of License Renewal

A. The department shall provide written notice to the CRC of the following:

1. license denial;
2. license revocation; or
3. denial of license renewal.

B. The CRC has the right to an administrative reconsideration of the license denial, license revocation or denial of license renewal.

1. If the CRC chooses to request an administrative reconsideration, the request must:

a. be in writing addressed to HSS;

b. be received by HSS within 15 calendar days of the center's receipt of the notice of the license denial, license revocation or denial of license renewal; and

c. include any documentation that demonstrates that the determination was made in error.

2. If a timely request for an administrative reconsideration is received, HSS shall provide the center with written notification of the date of the administrative reconsideration.

3. The center may appear in person at the administrative reconsideration and may be represented by counsel.

4. HSS shall not consider correction of a deficiency or violation as a basis for the reconsideration.

5. The center will be notified in writing of the results of the administrative reconsideration.

C. The administrative reconsideration process is not in lieu of the administrative appeals process.

D. The CRC has a right to an administrative appeal of the license denial, license revocation or denial of license renewal.

1. If the CRC chooses to request an administrative appeal, the request must:

a. be received by the DAL within 30 days of:

i. the receipt of the results of the administrative reconsideration, or

ii. the receipt of the notice of the license denial, revocation or denial of license renewal, if the CRC chose to forego its rights to an administrative reconsideration;

b. be in writing;

c. include any documentation that demonstrates that the determination was made in error; and

d. include the basis and specific reasons for the appeal.

2. The DAL shall not consider correction of a violation or a deficiency as a basis for the administrative appeal.

E. Administrative Appeals of License Revocations and Denial of License Renewals

1. If a timely request for an administrative appeal is received by the DAL, the center will be allowed to continue to operate and provide services until the DAL issues a final administrative decision.

F. Administrative Appeals of Immediate License Revocations or Denial of License Renewals

1. If DHH imposes an immediate license revocation or denial of license renewal, DHH may enforce the revocation or denial of license renewal during the appeal process.

2. If DHH chooses to enforce the revocation or denial of license renewal during the appeal process, the center will not be allowed to operate and/or provide services during the appeal process.

G. If a licensed CRC has a pending license revocation, and the center's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect, in any manner, the license revocation.

H. Administrative Hearings of License Denials, Denial of License Renewals and License Revocations

1. If a timely administrative appeal is submitted by the center, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

2. If the final DAL decision is to reverse the license denial, denial of license renewal or license revocation, the center's license will be re-instated upon the payment of any outstanding fees or sanctions fees due to the department.

3. If the final DAL decision is to affirm the denial of license renewal or license revocation, the center shall:

a. discharge and transition any and all clients receiving services according to the provisions of this Chapter;

b. comply with the requirements governing cessation of business in this Chapter; and

c. notify HSS within 10 days of closure of the location where the records will be stored and the name, address and phone number of the person responsible for the records.

I. There is no right to an administrative reconsideration or an administrative appeal of the issuance of a provisional initial license to a new CRC, or the issuance of a provisional license to a licensed CRC.

J. Administrative Reconsiderations and Administrative Appeals of the Expiration of a Provisional Initial License or Provisional License

1. A CRC with a provisional initial license, or a provisional license that expires due to deficiencies cited at the follow-up survey, has the right to request an administrative reconsideration and/or an administrative appeal of the deficiencies cited at the follow-up survey.

2. The center's request for an administrative reconsideration must:

a. be in writing;

b. be received by the HSS within five calendar days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the administrative reconsideration.

3. Correction of a violation or deficiency after the follow-up survey will not be considered as the basis for the administrative reconsideration or for the administrative appeal.

4. The issue to be decided in the administrative reconsideration and the administrative appeal is whether the deficiencies were properly cited at the follow-up survey.

5. The CRC's request for an administrative appeal must:

a. be in writing;

b. be submitted to the DAL within 15 calendar days of receipt of the notice of the results of the follow-up survey from the department; and

c. include the basis and specific reasons for the appeal.

6. A center with a provisional initial license or a provisional license that expires under the provisions of this Chapter shall cease providing services and discharge or transition clients unless the DAL or successor entity issues a stay of the expiration.

a. To request a stay, the center must submit its written application to the DAL at the time the administrative appeal is filed.

b. The DAL shall hold a contradictory hearing on the stay application. If the center shows that there is no potential harm to the center's clients, then the DAL shall grant the stay.

7. Administrative Hearing

a. If the CRC submits a timely request for an administrative hearing, the DAL shall conduct the hearing in accordance with the Administrative Procedure Act.

b. If the final DAL decision is to remove all deficiencies, the department will reinstate the center's license upon the payment of any outstanding fees and settlement of any outstanding sanctions due to the department.

c. If the final DAL decision is to uphold the deficiencies, thereby affirming the expiration of the provisional license, the center shall discharge any and all clients receiving services in accordance with the provisions of this chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter C. Organization and Administration

§5337. General Provisions

A. Purpose and Organizational Structure. The CRC shall develop and implement a statement maintained by the center that clearly defines the purpose of the CRC. The statement shall include:

1. the program philosophy;

2. the program goals and objectives;

3. the ages, sex and characteristics of clients accepted for care;

4. the geographical area served;

5. the types of services provided;

6. the admission criteria;

7. the needs, problems, situations or patterns addressed by the provider's program; and

8. an organizational chart of the provider which clearly delineates the lines of authority.

B. The CRC shall provide supervision and services that:

1. conform to the department's rules and regulations;

2. meet the needs of the client as identified and addressed in the client's treatment plan;

3. protect each client's rights; and

4. promote the social, physical and mental well-being of clients.

C. The CRC shall maintain any information or documentation related to compliance with this Chapter and shall make such information or documentation available to the department.

D. Required Reporting. The center shall report the following incidents in writing to HSS within 24 hours of discovery:

1. any disaster or emergency or other unexpected event that causes significant disruption to program operations;

2. any death or serious injury of a client:

a. that may potentially be related to program activities; or

b. who at the time of his/her death or serious injury was an active client of the center; and

3. allegations of client abuse, neglect, exploitation and misappropriation of client funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5339. Governing Body

A. A crisis receiving center shall have the following:

1. an identifiable governing body with responsibility for and authority over the policies and operations of the center;

2. documents identifying the governing body's:

a. members;

b. contact information for each member;

c. terms of membership;

d. officers; and

e. terms of office for each officer.

B. The governing body of a CRC shall:

1. be comprised of one or more persons;

2. hold formal meetings at least twice a year;

3. maintain written minutes of all formal meetings of the governing body; and

4. maintain by-laws specifying frequency of meetings and quorum requirements.

C. The responsibilities of a CRC's governing body include, but are not limited to:

1. ensuring the center's compliance with all federal, state, local and municipal laws and regulations as applicable;

2. maintaining funding and fiscal resources to ensure the provision of services and compliance with this Chapter;

3. reviewing and approving the center's annual budget;

4. designating qualified persons to act as CRC manager, clinical director and nurse manager, and delegating these persons the authority to manage the center;

5. at least once a year, formulating and reviewing, in consultation with the CRC manager, clinical director and nurse manager, written policies concerning:

a. the provider's philosophy and goals;

b. current services;

c. personnel practices and job descriptions; and

d. fiscal management;

6. evaluating the performances of the CRC manager, clinical director and nurse manager at least once a year;

7. meeting with designated representatives of the department whenever required to do so;

8. informing the department, or its designee, prior to initiating any substantial changes in the services provided by the center; and

9. ensuring statewide criminal background checks are conducted as required in this Chapter and state law.

D. A governing body shall ensure that the CRC maintains the following documents:

1. minutes of formal meetings and by-laws of the governing body;

2. documentation of the center's authority to operate under state law;

3. all leases, contracts and purchases-of-service agreements to which the center is a party;

4. insurance policies;

5. annual operating budgets;

6. a master list of all the community resources used by the center;

7. documentation of ownership of the center;

8. documentation of all accidents, incidents, abuse/neglect allegations; and

9. a daily census log of clients receiving services.

E. The governing body of a CRC shall ensure the following with regards to contract agreements to provide services for the center.

1. The agreement for services is in writing.

2. Every written agreement is reviewed at least once a year.

3. The deliverables are being provided as per the agreement.

4. The center retains full responsibility for all services provided by the agreement.

5. All services provided by the agreement shall:

a. meet the requirements of all laws, rules and regulations applicable to a CRC; and

b. be provided only by qualified providers and personnel in accordance with this Chapter.

6. If the agreement is for the provision of direct care services, the written agreement specifies the party responsible for screening, orientation, ongoing training and development of and supervision of the personnel providing services pursuant to the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5341. Policies and Procedures

A. Each CRC shall develop, implement and comply with center-specific written policies and procedures governing all requirements of this chapter, including, but not limited to the following areas:

1. protection of the health, safety, and wellbeing of each client;

2. providing treatment in order for clients to achieve optimal stabilization;

3. access to care that is medically necessary;

4. uniform screening for patient placement and quality assessment, diagnosis, evaluation, and referral to appropriate level of care;

5. operational capability and compliance;

6. delivery of services that are cost-effective and in conformity with current standards of practice;

7. confidentiality and security of all client information, records and files;

8. prohibition of illegal or coercive inducement, solicitation and kickbacks;

9. client rights;

10. grievance process;

11. emergency preparedness;

12. abuse and neglect;

13. incidents and accidents, including medical emergencies;

14. universal precautions;

15. documentation of services;

16. admission, including descriptions of screening and assessment procedures;

17. transfer and discharge procedures;

18. behavior management;

19. infection control;

20. transportation;

21. quality assurance;

22. medical and nursing services;

23. emergency care;

24. photography and video of clients; and

25. contraband.

B. A center shall develop, implement and comply with written personnel policies in the following areas:

1. recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff including volunteers;

2. written job descriptions for each staff position, including volunteers;

3. conducting staff health assessments that are consistent with OPH guidelines and indicate whether, when and how staff have a health assessment;

4. an employee grievance procedure;

5. abuse reporting procedures that require:

a. staff to report any allegations of abuse or mistreatment of clients pursuant to state and federal law; and

b. staff to report any allegations of abuse, neglect, exploitation or misappropriation of a client to DHH;

6. a non-discrimination policy;

7. a policy that requires all employees to report any signs or symptoms of a communicable disease or personal illness to their supervisor, CRC manager or clinical director as soon as possible to prevent the spread of disease or illness to other individuals;

8. procedures to ensure that only qualified personnel are providing care within the scope of the center's services;

9. policies governing staff conduct and procedures for reporting violations of laws, rules, and professional and ethical codes of conduct;

10. policies governing staff organization that pertain to the center's purpose, setting and location;

11. procedures to ensure that the staff's credentials are verified, legal and from accredited institutions; and

12. obtaining criminal background checks.

C. A CRC shall comply with all federal and state laws, rules and regulations in the implementation of its policies and procedures.

D. Center Rules

1. A CRC shall:

a. have a clearly written list of rules governing client conduct in the center;

b. provide a copy of the center's rules to all clients and, where appropriate, the client's parent(s) or legal guardian(s) upon admission; and

c. post the rules in an accessible location in the center.

E. The facility shall develop, implement and comply with policies and procedures that:

1. give consideration to the client's chronological and developmental age, diagnosis, and severity of illness when assigning a sleeping area or bedroom;

2. ensure that each client has his/her own bed; and

3. prohibit mobile homes from being used as client sleeping areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter D. Provider Operations

§5347. Client Records

A. The CRC shall ensure:

1. a single client record is maintained for each client according to current professional standards;

2. policies and procedures regarding confidentiality of records, maintenance, safeguarding and storage of records are developed, implemented and followed;

3. safeguards are in place to prevent unauthorized access, loss, and destruction of client records;

4. when electronic health records are used, the most up to date technologies and practices are used to prevent unauthorized access;

5. records are kept confidential according to federal and state laws and regulations;

6. records are maintained at the center where the client is currently active and for six months after discharge;

7. six months post-discharge, records may be transferred to a centralized location for maintenance;

8. client records are directly and readily accessible to the clinical staff caring for the client;

9. a system of identification and filing is maintained to facilitate the prompt location of the client's record;

10. all record entries are dated, legible and authenticated by the staff person providing the treatment, as appropriate to the media;

11. records are disposed of in a manner that protects client confidentiality;

12. a procedure for modifying a client record in accordance with accepted standards of practice is developed, implemented and followed;

13. an employee is designated as responsible for the client records;

14. disclosures are made in accordance with applicable state and federal laws and regulations; and

15. client records are maintained at least 6 years from discharge.

B. Record Contents. The center shall ensure that client records, at a minimum, contain the following:

1. the treatment provided to the client;

2. the client's response to the treatment;

3. other information, including:

a. all screenings and assessments;

b. provisional diagnoses;

c. referral information;

d. client information/data such as name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;

e. documentation of incidents that occurred;

f. attendance/participation in services/activities;

g. treatment plan that includes the initial treatment plan plus any updates or revisions;

h. lab work (diagnostic laboratory and other pertinent information, when indicated);

i. documentation of the services received prior to admission to the CRC as available;

j. consent forms;

k. physicians' orders;

l. records of all medicines administered, including medication types, dosages, frequency of administration, the individual who administered each dose and response to medication given on an as needed basis;

m. discharge summary;

n. other pertinent information related to client as appropriate; and

4. legible progress notes that are documented in accordance with professional standards of practice and:

a. document implementation of the treatment plan and results;

b. document the client's level of participation; and

c. are completed upon delivery of services by the direct care staff to document progress toward stated treatment plan goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5349. Client Funds and Possessions

A. The CRC shall:

1. maintain and safeguard all possessions, including money, brought to the center by clients;

2. maintain an inventory of each client's possessions from the date of admission; and

3. return all possessions to the client upon the client's discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5351. Quality Improvement Plan

A. A CRC shall have a quality improvement (QI) plan that:

1. assures that the overall function of the center is in compliance with federal, state, and local laws;

2. is meeting the needs of the citizens of the area;

3. is attaining the goals and objectives established in the center's mission statement;

4. maintains systems to effectively identify issues that require quality monitoring, remediation and improvement activities;

5. improves individual outcomes and individual satisfaction;

6. includes plans of action to correct identified issues that:

a. monitor the effects of implemented changes; and

b. result in revisions to the action plan.

7. is updated on an ongoing basis to reflect changes, corrections and other modifications.

B. The QI plan shall include:

1. a sample review of client case records on a quarterly basis to ensure that:

a. individual treatment plans are up to date;

b. records are accurate, complete and current; and

c. the treatment plans have been developed and implemented as ordered.

2. a process for identifying on a quarterly basis the risk factors that affect or may affect the health, safety and/or welfare of the clients that includes, but is not limited to:

a. review and resolution of grievances;

b. incidents resulting in harm to client or elopement;

c. allegations of abuse, neglect and exploitation; and

d. seclusion and restraint.

3. a process to correct problems identified and track improvements; and

4. a process of improvement to identify or trigger further opportunities for improvement.

C. The QI plan shall establish and implement an internal evaluation procedure to:

1. collect necessary data to formulate a plan; and

2. hold quarterly staff committee meetings comprised of at least three staff members, one of whom is the CRC manager, nurse manager or clinical director, who evaluate the QI process and activities on an ongoing basis.

D. The CRC shall maintain documentation of the most recent 12 months of the QI activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter E. Personnel

§5357. General Requirements

A. The CRC shall maintain an organized professional staff who is accountable to the governing body for the overall responsibility of:

1. the quality of all clinical care provided to clients;

2. the ethical conduct and professional practices of its members;

3. compliance with policies and procedures approved by the governing body; and

4. the documented staff organization that pertains to the center's setting and location.

B. The direct care staff of a CRC shall:

1. have the appropriate qualifications to provide the services required by its clients' treatment plans; and

2. not practice beyond the scope of his/her license, certification or training.

C. The CRC shall ensure that:

1. qualified direct care staff members are present with the clients as necessary to ensure the health, safety and well-being of clients;

2. staff coverage is maintained in consideration of:

a. acuity of the clients being serviced;

b. the time of day;

c. the size, location, physical environment and nature of the center;

d. the ages and needs of the clients; and

e. ensuring the continual safety, protection, direct care and supervision of clients;

3. all direct care staff have current certification in cardiopulmonary resuscitation; and

4. applicable staffing requirements in this Chapter are maintained.

D. Criminal Background Checks

1. For any CRC that is treating minors, the center shall obtain a criminal background check on all staff. The background check must be conducted within 90 days prior to hire or employment in the manner required by RS 15:587.1.

2. For any CRC that is treating adults, the center shall obtain a statewide criminal background check on all unlicensed direct care staff by an agency authorized by the Office of State Police to conduct criminal background checks. The background check must be conducted within 90 days prior to hire or employment.

3. A CRC that hires a contractor to perform work which does not involve any contact with clients is not required to conduct a criminal background check on the contractor if accompanied at all times by a staff person when clients are present in the center.

E. The CRC shall review the Louisiana State Nurse Aide Registry and the Louisiana Direct Service Worker Registry to ensure that each unlicensed direct care staff member prior to hire or employment and at least annually thereafter, does not have a negative finding on either registry.

F. Prohibitions

1. The center providing services to minors is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a person who supervises minors or provides direct care to minors who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. violence, abuse or neglect against a person;

ii. possession, sale, or distribution of illegal drugs;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person; or

v. a crime of violence.

b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

2. The center providing services to adults is prohibited from knowingly employing or contracting with, or retaining the employment of or contract with, a member of the direct care staff who:

a. has entered a plea of guilty or nolo contendere, no contest, or has been convicted of a felony involving:

i. abuse or neglect of a person;

ii. possession, sale, or distribution of a controlled dangerous substance

(a). within the last five years, or

(b). when the employee/contractor is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice;

iii. sexual misconduct and/or any crimes that requires the person to register pursuant to the Sex Offenders Registration Act;

iv. misappropriation of property belonging to another person;

(a). within the last five years; or

(b). when the employee is under the supervision of the Louisiana Department of Public Safety and Corrections, the U.S. Department of Probation and Parole or the U.S. Department of Justice; or

v. a crime of violence.

b. has a finding placed on the Louisiana State Nurse Aide Registry or the Louisiana Direct Service Worker Registry.

G. Orientation and In-Service Training

1. All staff shall receive orientation prior to providing services and/or working in the center.

2. All direct care staff shall receive orientation, at least 40 hours of which is in crisis services and intervention training.

3. All direct care staff and other appropriate personnel shall receive in-service training at least once a year, at least 12 hours of which is in crisis services and intervention training.

4. All staff shall receive in-service training according to center policy at least once a year and as deemed necessary depending on the needs of the clients.

5. The content of the orientation and in-service training shall include the following:

a. confidentiality;

b. grievance process;

c. fire and disaster plans;

d. emergency medical procedures;

e. organizational structure and reporting relationships;

f. program philosophy;

g. personnel policies and procedures;

h. detecting and mandatory reporting of client abuse, neglect or misappropriation;

i. an overview of mental health and substance abuse, including an overview of behavioral health settings and levels of care;

j. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

k. side effects and adverse reactions commonly caused by psychotropic medications;

l. basic skills required to meet the health needs and challenges of the client;

m. components of a crisis cycle;

n. recognizing the signs of anxiety and escalating behavior;

o. crisis intervention and the use of non-physical intervention skills, such as de-escalation, mediation conflict resolution, active listening and verbal and observational methods to prevent emergency safety situations;

p. therapeutic communication;

q. client's rights;

r. duties and responsibilities of each employee;

s. standards of conduct required by the center including professional boundaries;

t. information on the disease process and expected behaviors of clients;

u. levels of observation;

v. maintaining a clean, healthy and safe environment and a safe and therapeutic milieu;

w. infectious diseases and universal precautions;

x. overview of the Louisiana licensing standards for crisis receiving centers;

y. basic emergency care for accidents and emergencies until emergency medical personnel can arrive at center; and

z. regulations, standards and policies related to seclusion and restraint, including the safe application of physical and mechanical restraints and physical assessment of the restrained client.

6. The in-services shall serve as a refresher for subjects covered in orientation.

7. The orientation and in-service training shall:

a. be provided only by staff who are qualified by education, training, and experience;

b. include training exercises in which direct care staff members successfully demonstrate in practice the techniques they have learned for managing the delivery of patient care services; and

c. require the direct care staff member to demonstrate competency before providing services to clients.

I. Staff Evaluation

1. The center shall complete an annual performance evaluation of all employees.

2. The center's performance evaluation procedures for employees who provide direct care to clients shall address the quality and nature of the employee's relationships with clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5359. Personnel Qualifications and Responsibilities

A. A CRC shall have the following minimum staff:

1. a CRC manager who:

a. has a minimum of a master's degree in a human services field or is a licensed registered nurse;

b. has at least one year of qualifying experience in the field of behavioral health;

c. is a full time employee; and

d. has the following assigned responsibilities:

i. supervise and manage the day to day operation of the CRC;

ii. review reports of all accidents/incidents occurring on the premises and identify hazards to the clinical director;

iii. participate in the development of new programs and modifications;

iv. perform programmatic duties and/or make clinical decisions only within the scope of his/her licensure; and

v. shall not have other job responsibilities that impede the ability to maintain the administration and operation of the CRC.

2. a clinical director who is:

a. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

b. a psychiatric and mental health nurse practitioner who has an unrestricted APRN license with prescriptive authority, and who is in collaborative practice with a Louisiana licensed physician for consultation in accordance with the Louisiana State Board of Nursing (LSBN) requirements;

c. responsible for developing and implementing policies and procedures and oversees clinical services and treatment;

d. on duty as needed and on call and available at all times;

3. a nurse manager who:

a. holds a current unrestricted license as a registered nurse (RN) in the state of Louisiana;

b. shall be a full time employee;

c. has been a RN for a minimum of five years;

d. has three years of qualifying experience providing direct care to patients with behavioral health diagnoses and at least one year qualifying experience providing direct care to medical/surgical inpatients;

e. has the following responsibilities:

i. develop and ensure implementation of nursing policies and procedures;

ii. provide oversight of nursing staff and the services they provide;

iii. ensure that any other job responsibilities will not impede the ability to provide oversight of nursing services.

4. authorized licensed prescriber who:

a. shall be either:

i. a physician licensed in the state of Louisiana with expertise in managing psychiatric and medical conditions in accordance with the LSBME; or

ii. a psychiatric and mental health nurse practitioner who has an unrestricted license and prescriptive authority and a licensed physician on call at all times to be available for consultation;

b. is on call at all times;

c. is responsible for managing the psychiatric and medical care of the clients;

5. licensed mental health professionals (LMHPs):

a. the center shall maintain a sufficient number of LMHPs to meet the needs of its clients.

b. there shall be at least one LMHP on duty during hours of operation.

c. the LMHP shall have one year of qualifying experience in direct care to clients with behavioral health diagnoses and shall have the following responsibilities:

i. provide direct care to clients and may serve as primary counselor to specified caseload;

ii. serve as a resource person for other professionals and unlicensed personnel in their specific area of expertise;

iii. attend and participate in individual care conferences, treatment planning activities, and discharge planning; and

iv. function as the client's advocate in all treatment decisions.

6. nurses:

a. the center shall maintain licensed nursing staff to meet the needs of its clients.

b. all nurses shall have:

i. a current nursing license from the state of Louisiana;

ii. at least one year qualifying experience in providing direct care to clients with a behavioral health diagnosis; and

iii. at least one year qualifying experience providing direct care to medical/surgical inpatients.

c. the nursing staff has the following responsibilities:

i. provide nursing services in accordance with accepted standards of practice, the CRC policies and the individual treatment plans of the clients;

ii. supervise non-licensed clinical personnel;

iii. each CRC shall have at least one RN on duty at the CRC during hours of operation; and

iv. as part of orientation, all nurses shall receive 24 hours of education focusing on psychotropic medications, their side effects and possible adverse reactions. All nurses shall receive training in psychopharmacology for at least four hours per year.

B. Optional Staff

1. The CRC shall maintain non-licensed clinical staff as needed who shall:

a. be at least 18 years of age;

b. have a high school diploma or GED;

c. provide services in accordance with CRC policies, documented education, training and experience, and the individual treatment plans of the clients; and

d. be supervised by the nursing staff.

2. Volunteers

a. The CRC that utilizes volunteers shall ensure that each volunteer:

i. meets the requirements of non-licensed clinical staff;

ii. is screened and supervised to protect clients and staff;

iii. is oriented to facility, job duties, and other pertinent information;

iv. is trained to meet requirements of duties assigned;

v. is given a written job description or written agreement;

vi. is identified as a volunteer;

vii. is trained in privacy measures; and

viii. is required to sign a written confidentiality agreement.

b. The facility shall designate a volunteer coordinator who:

i. has the experience and training to supervise the volunteers and their activities; and

ii. is responsible for selecting, evaluating and supervising the volunteers and their activities.

3. If a CRC utilizes student interns, it shall ensure that each student intern:

a. has current registration with the appropriate Louisiana board when required or educational institution, and is in good standing at all times;

b. provides direct client care utilizing the standards developed by the professional board;

c. provides care only under the direct supervision of an individual authorized in accordance with acceptable standards of practice; and

d. provides only those services for which the student has been properly trained and deemed competent to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5361. Personnel Records

A. A CRC shall maintain a personnel file for each employee and direct care staff member in the center. Each record shall contain:

1. the application for employment and/or resume, including contact information and employment history for the preceding five years, if applicable;

2. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;

3. any required medical examinations or health screens;

4. evidence of current applicable professional credentials/certifications according to state law or regulations;

5. annual performance evaluations to include evidence of competency in performing assigned tasks;

6. personnel actions, other appropriate materials, reports and notes relating to the individual's employment;

7. the staff member's starting and termination dates;

8. proof of orientation, training and in-services;

9. results of criminal background checks, if required;

10. job descriptions and performance expectations;

11. a signed attestation annually by each member of the direct care staff indicating that he/she has not been convicted of or pled guilty or nolo contendere to a crime, other than traffic violations; and

12. written confidentiality agreement signed by the personnel every 12 months.

B. A CRC shall retain personnel files for at least three years following termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter F. Admission, Transfer and Discharge

§5367. Admission Requirements

A. A CRC shall not refuse admission to any individual on the grounds of race, national origin, ethnicity or disability.

B. A CRC shall admit only those individuals whose needs, pursuant to the screening, can be fully met by the center.

C. A CRC shall expect to receive individuals who present voluntarily to the unit and/or individuals who are brought to the unit under an OPC, CEC, or PEC.

D. The CRC shall develop and implement policies and procedures for diverting individuals when the CRC is at capacity, that shall include:

1. notifying emergency medical services (EMS), police and the OBH or its designee in the service area;

2. conducting a screening on each individual that presents to the center; and

3. safely transferring the presenting individual to an appropriate provider;

E. Pre-Admission Requirements

1. Prior to admission, the center shall attempt to obtain documentation from the referring emergency room, agency, facility or other source, if available, that reflects the client's condition.

2. The CRC shall conduct a screening on each individual that presents for treatment that:

a. is performed by a RN who may be assisted by other personnel;

b. is conducted within 15 minutes of entering the center;

c. determines eligibility and appropriateness for admission;

d. assesses whether the client is an imminent danger to self or others; and

e. includes the following:

i. taking vital signs;

ii. breath analysis and urine drug screen

iii. brief medical history including assessment of risk for imminent withdrawal; and

iv. clinical assessment of current condition to determine primary medical problem(s) and appropriateness of admission to CRC or transfer to other medical provider;

F. Admission Requirements

1. The CRC shall establish the CRC's admission requirements that include:

a. availability of appropriate physical accommodations;

b. legal authority or voluntary admission; and

c. written documentation that client and/or family if applicable, consents to treatment.

2. The CRC shall develop, implement and comply with admission criteria that, at a minimum, include the following inclusionary and exclusionary requirements:

a. Inclusionary: the client is experiencing a seriously acute psychological/emotional change which results in a marked increase in personal distress and exceeds the abilities and resources of those involved to effectively resolve it;

b. Exclusionary: the client is experiencing an exacerbation of a chronic condition that does not meet the inclusionary criteria listed in §5367.F.2.a.

3. If the client qualifies for admission into the CRC, the center shall ensure that a behavioral health assessment is conducted:

a. by a LMHP;

b. within 4 hours of being received in the unit unless extenuating or emergency circumstances preclude the delivery of this service within this time frame; and

c. includes the following:

i. a history of previous emotional, behavioral and substance use problems and treatment;

ii. a social assessment to include a determination of the need for participation of family members or significant others in the individual's treatment; the social, peer-group, and environmental setting from which the person comes; family circumstances; current living situation; employment history; social, ethnic, cultural factors; and childhood history; current or pending legal issues including charges, pending trial, etc.;

iii. an assessment of the individual's ability and willingness to cooperate with treatment;

iv. an assessment for any possible abuse or neglect; and

v. review of any laboratory results, results of breath analysis and urine drug screens on patients and the need for further medical testing.

4. The CRC shall ensure that a nursing assessment is conducted that is:

a. begun at time of admission and completed within 24 hours; and

b. conducted by a RN with the assistance of other personnel.

5. The center shall ensure that a physical assessment is conducted by an authorized licensed prescriber within 12 hours of admission that includes:

a. a complete medical history;

b. direct physical examination; and

c. documentation of medical problems.

6. The authorized license prescriber, LMHP and/or RN shall conduct a review of the medical and psychiatric records of current and past diagnoses, laboratory results, treatments, medications and dose response, side-effects and compliance with:

a. the review of data reported to clinical director;

b. synthesis of data received is incorporated into treatment plan by clinical director;

G. Client/Family Orientation. Upon admission or as soon as possible, each facility shall ensure that a confidential and efficient orientation is provided to the client and the client's designated representative, if applicable, concerning:

1. visitation;

2. physical layout of the center;

3. safety;

4. center rules; and

5. all other pertinent information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5369. Discharge, Transfer and Referral Requirements

A. The CRC shall develop, implement and comply with policies and procedures that address when and how clients will be discharged and referred or transferred to other providers in accordance with applicable state and federal laws and regulations.

B. Discharge planning shall begin upon admission.

C. The CRC shall ensure that a client is discharged:

1. when the client's treatment goals are achieved, as documented in the client's treatment plan;

2. when the client's issues or treatment needs are not consistent with the services the center is authorized or able to provide; or

3. according to the center's established written discharge criteria.

D. Discharge Plan. Each CRC client shall have a written discharge plan to provide continuity of services that includes:

1. the client's transfer or referral to outside resources, continuing care appointments, and crisis intervention assistance;

2. documented attempts to involve the client and the family or an alternate support system in the discharge planning process;

3. the client's goals or activities to sustain recovery;

4. signature of the client or, if applicable, the client's parent or guardian, with a copy provided to the individual who signed the plan;

5. name, dosage and frequency of client's medications ordered at the time of discharge;

6. prescriptions for medications ordered at time of discharge; and

7. the disposition of the client's possessions, funds and/or medications, if applicable.

E. The discharge summary shall be completed within 30 days and include:

1. the client's presenting needs and issues identified at the time of admission;

2. the services provided to the client;

3. the center's assessment of the client's progress towards goals;

4. the circumstances of discharge; and

5. the continuity of care recommended following discharge, supporting documentation and referral information.

F. Transfer Process. The CRC responsible for the discharge and transfer of the client shall:

1. request and receive approval from the receiving facility prior to transfer;

2. notify the receiving facility prior to the arrival of the client of any significant medical/psychiatric conditions/complications or any other pertinent information that will be needed to care for the client prior to arrival; and

3. transfer all requested client information and documents upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter G. Program Operations

§5375. Treatment Services

A. A CRC shall:

1. operate 24 hours per day seven days a week;

2. operate up to 24 licensed beds;

3. provide services to either adults or minors but not both;

4. provide services that include, but are not limited to:

a. emergency screening;

b. assessment;

c. crisis intervention and stabilization;

d. 24 hour observation;

e. medication administration; and

f. referral to the most appropriate and least restrictive setting available consistent with the client's needs.

B. A CRC shall admit clients for an estimated length of stay of 3-7 days. If a greater length of stay is needed, the CRC shall maintain documentation of clinical justification for the extended stay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5377. Laboratory Services

A. The CRC shall have laboratory services available to meet the needs of its clients, including the ability to:

1. obtain STAT laboratory results as needed at all times;

2. conduct a dipstick urine drug screen; and

3. conduct a breath analysis for immediate determination of blood alcohol level.

B. The CRC shall maintain a CLIA certificate for the laboratory services provided on-site.

C. The CRC shall ensure that all contracted laboratory services are provided by a CLIA clinical laboratory improvement amendment (CLIA) certified laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5379. Pharmaceutical Services and Medication Administration

A. The CRC may provide pharmaceutical services on-site at the center or off-site pursuant to a written agreement with a pharmaceutical provider.

B. All compounding, packaging, and dispensing of medications shall be accomplished in accordance with Louisiana laws and Board of Pharmacy regulations and be performed by or under the direct supervision of a registered pharmacist currently licensed to practice in Louisiana.

C. The CRC shall ensure that a mechanism exists to:

1. provide pharmaceutical services 24 hours per day; and

2. obtain STAT medications, as needed, within an acceptable time frame, at all times.

D. CRCs that utilize off-site pharmaceutical providers pursuant to a written agreement shall have:

1. a physician who assumes the responsibility of procurement and possession of medications; and

2. an area for the secure storage of medication and medication preparation in accordance with Louisiana Board of Pharmacy rules and regulations.

E. A CRC shall maintain:

1. a site-specific Louisiana controlled substance license in accordance with the Louisiana Uniform Controlled Dangerous Substance Act; and

2. a United States Drug Enforcement Administration controlled substance registration for the facility in accordance with Title 21 of the United States Code.

F. The CRC shall develop, implement and comply with written policies and procedures in accordance with applicable federal, state and local laws and ordinances that govern:

1. the safe administration and handling of all prescription and non-prescription medications;

2. the storage, recording and control of all medications;

3. the disposal of all discontinued and/or expired medications and containers with worn, illegible or missing labels;

4. the use of prescription medications including:

a. when medication is administered, medical monitoring occurs to identify specific target symptoms;

b. a procedure to inform clients, staff, and where appropriate, client's parent(s), legal guardian(s) or designated representatives, of each medication's anticipated results, the potential benefits and side-effects as well as the potential adverse reaction that could result from not taking the medication as prescribed;

c. involving clients and, where appropriate, their parent(s) or legal guardian(s), and designated representatives in decisions concerning medication; and

d. staff training to ensure the recognition of the potential side effects of the medication.

5. the list of abbreviations and symbols approved for use in the facility;

6. recording of medication errors and adverse drug reactions and reporting them to the client's physician or authorized prescriber, and the nurse manager;

7. the reporting of and steps to be taken to resolve discrepancies in inventory, misuse and abuse of controlled substances in accordance with federal and state law;

8. provision for emergency pharmaceutical services;

9. a unit dose system; and

10. procuring and the acceptable timeframes for procuring STAT medications when the medication needed is not available on-site.

C. The CRC shall ensure that:

1. medications are administered by licensed health care personnel whose scope of practice includes administration of medications;

2. any medication is administered according to the order of an authorized licensed prescriber;

3. it maintains a list of authorized licensed prescribers that is accessible to staff at all times.

4. all medications are kept in a locked illuminated clean cabinet, closet or room at temperature controls according to the manufacturer's recommendations, accessible only to individuals authorized to administer medications;

5. medications are administered only upon receipt of written orders, electromechanical facsimile, or verbal orders from an authorized licensed prescriber;

6. all verbal orders are signed by the licensed prescriber within 72 hours;

7. medications that require refrigeration are stored in a refrigerator or refrigeration unit separate from the refrigerators or refrigeration units that store food, beverages, or laboratory specimens;

8. all prescription medication containers are labeled to identify:

a. the client's full name;

b. the name of the medication;

c. dosage;

d. quantity and date dispensed;

e. directions for taking the medication;

f. required accessory and cautionary statements;

g. prescriber's name; and

h. the expiration date.

9. Medication errors, adverse drug reactions, and interactions with other medications, food or beverages taken by the client are immediately reported to the client's physician or authorized licensed prescriber, supervising pharmacist and nurse manager with an entry in the client's record.

10. All controlled substances shall be kept in a locked cabinet or compartment separate from other medications;

11. Current and accurate records are maintained on the receipt and disposition of controlled substances;

12. Controlled substances are reconciled:

a. at least twice a day by staff authorized to administer controlled substances; or

b. by an automated system that provides reconciliation;

13. Discrepancies in inventory of controlled substances are reported to the nurse manager and the supervising pharmacist in accordance with federal and state laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5381. Transportation

A. The CRC shall establish, implement and comply with policies and procedures to:

1. secure emergency transportation in the event of a client's medical emergency; and

2. provide non-emergent medical transportation to the clients as needed.

B. The facility shall have a written agreement with a transportation service in order to provide non-emergent transport services needed by its clients that shall require all vehicles used to transport CRC clients are:

1. maintained in a safe condition;

2. properly licensed and inspected in accordance with state law;

3. operated at a temperature that does not compromise the health, safety and needs of the client;

4. operated in conformity with all applicable motor vehicle laws;

5. current liability coverage for all vehicles used to transport clients;

6. all drivers of vehicles that transport CRC clients are properly licensed to operate the class of vehicle in accordance with state law; and

7. the ability to transport non-ambulatory clients in appropriate vehicles if needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5383. Food and Diet

A. The CRC shall ensure that:

1. all dietary services are provided under the direction of a Louisiana licensed and registered dietician either directly or by written agreement;

2. menus are approved by the registered dietician;

3. meals are of sufficient quantity and quality to meet the nutritional needs of clients, including religious and dietary restrictions;

4. meals are in accordance with Federal Drug Administration (FDA) dietary guidelines and the orders of the authorized licensed prescriber;

5. at least three meals plus an evening snack are provided daily with no more than 14 hours between any two meals;

6. meals are served in a manner that maintains the safety and security of the client and are free of identified contraband;

7. all food is stored, prepared, distributed, and served under safe and sanitary conditions in accordance with the Louisiana Sanitary Code;

8. all equipment and utensils used in the preparation and serving of food are properly cleaned, sanitized and stored in accordance with the Louisiana Sanitary Code; and

9. if meals are prepared on-site, they are prepared in an OPH approved kitchen.

B. The CRC may provide meal service and preparation pursuant to a written agreement with an outside food management company. If provided pursuant to a written agreement, the CRC shall:

1. maintain responsibility for ensuring compliance with this Chapter;

2. provide written notice to HSS and OPH within 10 calendar days of the effective date of the contract;

3. ensure that the outside food management company possesses a valid OPH retail food permit and meets all requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the special requirements for highly susceptible populations as promulgated in the Louisiana Sanitary Code provisions governing food display and service for retail food establishments (specifically LAC 51:XXIII.1911 as amended May 2007); and

4. ensure that the food management company employs or contracts with a licensed and registered dietician who serves the center as needed to ensure that the nutritional needs of the clients are met in accordance with the authorized licensed prescriber's orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter H. Client Rights

§5389. General Provisions

A. The CRC shall develop, implement and comply with policies and procedures that:

1. protect its clients' rights;

2. respond to questions and grievances pertaining to these rights;

3. ensure compliance with clients' rights enumerated in R.S. 28:171; and

4. ensure compliance with minors' rights enumerated in the Louisiana Children's Code.

B. A CRC's client and, if applicable, the client's parent(s) or legal guardian or chosen designated representative, have the following rights:

1. to be informed of the client's rights and responsibilities at the time of or shortly after admission;

2. to have a family member, chosen representative and/or his or her own physician notified of admission at the client's request to the CRC;

3. to receive treatment and medical services without discrimination based on race, age, religion, national origin, gender, sexual orientation, disability, marital status, diagnosis, ability to pay or source of payment;

4. to be free from abuse, neglect, exploitation and harassment;

5. to receive care in a safe setting;

6. to receive the services of a translator or interpreter, if applicable, to facilitate communication between the client and the staff;

7. to be informed of the client's own health status and to participate in the development, implementation and updating of the client's treatment plan;

8. to make informed decisions regarding the client's care in accordance with federal and state laws and regulations;

9. to consult freely and privately with the client's legal counsel or to contact an attorney at any reasonable time;

10. to be informed, in writing, of the policies and procedures for initiation, review and resolution of grievances or client complaints;

11. to submit complaints or grievances without fear of reprisal;

12. to have the client's information and medical records, including all computerized medical information, kept confidential in accordance with federal and state statutes and rules/regulations;

13. to be provided indoor and/or outdoor recreational and leisure opportunities;

14. to be given a copy of the center's rules and regulations upon admission or shortly thereafter;

15. to receive treatment in the least restrictive environment that meets the client's needs;

16. to be subject to the use of restraint and/or seclusion only in accordance with federal and state law, rules and regulations;

17. to be informed of all estimated charges and any limitations on the length of services at the time of admission or shortly thereafter;

18. to contact DHH at any reasonable time;

19. to obtain a copy of these rights as well as the address and phone number of DHH and the Mental Health Advocacy Service at any time; and

20. to be provided with personal hygiene products, including but not limited to, shampoo, deodorant, toothbrush, toothpaste, and soap, if needed.

C. A copy of the clients' right shall be posted in the facility and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5391. Grievances

A. The facility shall develop, implement and comply with a written grievance procedure for clients designed to allow clients to submit a grievance without fear of retaliation. The procedure shall include, but not be limited to:

1. process for filing a grievance;

2. a time line for responding to the grievance;

3. a method for responding to a grievance; and

4. the staff responsibilities for addressing and resolving grievances.

B. The facility shall ensure that:

1. the client and, if applicable, the client's parent(s) or legal guardian(s), is aware of and understands the grievance procedure; and

2. all grievances are addressed and resolved to the best of the center's ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Subchapter I. Physical Environment

§5397. Interior Space

A. The CRC shall:

1. have a physical environment that protects the health, safety and security of the clients;

2. have routine maintenance and cleaning programs in all areas of the center;

3. be well-lit, clean, and ventilated;

4. conduct a risk assessment of each client and the physical environment of the facility in order to ensure the safety and well-being of all clients admitted to the facility;

5. maintain its physical environment, including, but not limited to, all equipment, fixtures, plumbing, electrical, and furnishings, in good order and safe condition in accordance with manufacturer's recommendations;

6. maintain heating, ventilation and cooling systems in good order and safe condition to ensure a comfortable environment; and

7. ensure that electric receptacles in client care areas are tamper-resistant or equipped with ground fault circuit interrupters.

B. Common Area. The CRC shall have designated space:

1. to be used for group meetings, dining, visitation, leisure and recreational activities;

2. that is at least 25 square feet per client and no less than 150 square feet exclusive of sleeping areas, bathrooms, areas restricted to staff and office areas; and

3. that contains tables for eating meals.

C. Bathrooms

1. Each bathroom to be used by clients shall contain:

a. a lavatory with:

i. paper towels or an automatic dryer;

ii. a soap dispenser with soap for individual use; and

iii. a wash basin with hot and cold running water;

b. tubs and/or showers that:

i. have hot and cold water;

ii. have slip proof surfaces; and

iii. allow for individual privacy

c. toilets:

i. an adequate supply of toilet paper;

ii. with seats; and

iii. that allow for individual privacy;

d. a sink, tub or shower and toilet for the number of clients and in accordance with the Louisiana Sanitary Code.

e. shatterproof mirrors secured to the walls at convenient heights;

f. plumbing, piping, ductwork, and that are recessed or enclosed in order to be inaccessible to clients; and

g. other furnishings necessary to meet the clients' basic hygienic needs.

2. A CRC shall have at least one separate toilet and lavatory facility for the staff.

D. Sleeping Areas and Bedroom(s)

1. A CRC that utilizes a sleeping area for multiple clients shall:

a. ensure that the sleeping area has at least 60 square feet per bed of clear floor area and does not contain or utilize bunk beds; and

b. shall maintain at least one separate bedroom.

2. Bedrooms. A CRC that utilizes individual bedrooms shall ensure that each bedroom:

a. accommodates no more than one client; and

b. has at least 80 square feet of clear floor area.

3. The CRC shall ensure that each client:

a. has sufficient separate storage space for clothing, toilet articles and other personal belongings of clients;

b. has sheets, pillow, bedspread, towels, washcloths and blankets that are:

i. intact and in good repair,

ii. systematically removed from use when no longer usable;

iii. clean;

iv. provided as needed or when requested unless the request is unreasonable;

c. is given a bed for individual use that:

i. is no less than 30 inches wide,

ii. is of solid construction,

iii. has a clean, comfortable, impermeable, nontoxic and fire retardant mattress, and

iv. is appropriate to the size and age of the client.

E. Administrative and Staff Areas

1. The CRC shall maintain a space that is distinct from the client common areas that serves as an office for administrative functions.

2. The CRC shall have a designated space for nurses and other staff to complete tasks, be accessible to clients and to observe and monitor client activity within the unit.

F. Counseling and Treatment Area

1. The CRC shall have a designated space to allow for private physical examination that is exclusive of sleeping areas and common spaces.

2. The CRC shall have a designated space to allow for private and small group discussions and counseling sessions between individual clients and staff that is exclusive of sleeping areas and common space.

3. The CRC may utilize the same space for the counseling area and examination area.

G. Seclusion Room

1. The CRC shall have at least one seclusion room that:

a. is for no more than one client; and

b. allows for continual visual observation and monitoring of the client either:

i. directly; or

ii. by a combination of video and audio;

c. has a monolithic ceiling;

d. is a minimum of 80 square feet; and

e. contains a stationary restraint bed that is secure to the floor;

f. flat walls that are free of any protrusions with angles;

g. does not contain electrical receptacles;

H. Kitchen

1. If a CRC prepares meals on-site, the CRC shall have a full service kitchen that:

a. includes a cooktop, oven, refrigerator, freezer, hand washing station, storage and space for meal preparation;

b. complies with OPH regulations;

c. has the equipment necessary for the preparation, serving, storage and clean-up of all meals regularly served to all of the clients and staff;

d. contains trash containers covered and made of metal or United Laboratories-approved plastic; and

e. maintains the sanitation of dishes.

2. A CRC that does not provide a full service kitchen accessible to staff 24 hours per day shall have a nourishment station or a kitchenette, restricted to staff only, in which staff may prepare nourishments for clients, that includes:

a. a kitchen sink;

b. a work counter;

c. a refrigerator;

d. storage cabinets;

e. equipment for preparing hot and cold nourishments between scheduled meals; and

f. space for trays and dishes used for non-scheduled meal service.

3. A CRC may utilize ice making equipment if the ice maker:

a. is self-dispensing; or

b. is in an area restricted to staff only;

I. Laundry

1. The CRC shall have an automatic washer and dryer for use by staff when laundering clients' clothing.

2. The CRC shall have:

a. provisions to clean and launder soiled linen, other than client clothing, either on-site or off-site by written agreement;

b. a separate area for holding soiled linen until it is laundered; and

c. a clean linen storage area.

J. Storage

1. The CRC shall have separate and secure storage areas that are inaccessible to clients for the following:

a. client possessions that may not be accessed during their stay;

b. hazardous, flammable and/or combustible materials; and

2. records and other confidential information.

K. Furnishings

1. The CRC shall ensure that its furnishings are:

a. designed to suit the size, age and functional status of the clients;

b. in good repair;

c. clean;

d. promptly repaired or replaced if defective, run-down or broken.

L. Hardware, Fixtures and other Protrusions

1. If grab bars are used, the CRC shall ensure that the space between the bar and the wall shall be filled to prevent a cord from being tied around it.

2. All hardware as well as sprinkler heads, lighting fixtures and other protrusions shall be:

a. recessed or of a design to prohibit client access; and

b. tamper-resistant.

3. Towel bars, shower curtain rods, clothing rods and hooks are prohibited.

M. Ceilings

1. The CRC shall ensure that the ceiling is:

a. no less than 7.5 feet high and secured from access; or

b. at least 9 feet in height; and

c. all overhead plumbing, piping, duct work or other potentially hazardous elements shall be concealed above the ceiling.

N. Doors and Windows

1. All windows shall be fabricated with laminated safety glass or protected by polycarbonate, laminate or safety screens.

2. Door hinges shall be designed to minimize points for hanging.

3. Except for specifically designed anti-ligature hardware, door handles shall point downward in the latched or unlatched position.

4. All hardware shall have tamper-resistant fasteners.

5. The center shall ensure that outside doors, windows and other features of the structure necessary for safety and comfort of individuals:

a. are secured for safety;

b. prohibit clients from gaining unauthorized egress;

c. prohibit an outside from gaining unauthorized ingress;

d. if in disrepair, not accessible to clients until repaired; and

e. repaired as soon as possible.

6. The facility shall ensure that all closets, bedrooms and bathrooms for clients that are equipped with doors do not have locks and can be readily opened from both sides.

O. Smoking

1. The CRC shall prohibit smoking in the interior of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5399. Exterior Space Requirements

A. The CRC shall maintain all exterior areas to prevent elopement, injury, suicide and the introduction of contraband, and shall maintain a perimeter security system designed to monitor and control visitor access and client egress.

B. The facility shall maintain all exterior areas and structures of the facility in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall ensure the following:

1. garbage stored outside is secured in non-combustible, covered containers and are removed on a regular basis;

2. trash collection receptacles and incinerators are separate from any area accessible to clients and located as to avoid being a nuisance;

3. unsafe areas, including steep grades, open pits, swimming pools, high voltage boosters or high speed roads are fenced or have natural barriers to protect clients;

4. fences that are in place are in good repair;

5. exterior areas are well lit; and

6. the facility has appropriate signage that:

a. is visible to the public;

b. indicates the facility's legal or trade name;

c. clearly states that the CRC provides behavioral health services only; and

d. indicates the center is not a hospital or emergency room.

D. A CRC with an outdoor area to be utilized by its clients shall ensure that the area is safe and secure from access and egress.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 54. Crisis Receiving Centers

Subchapter J. Safety and Emergency Preparedness

§5401. General Safety Provisions

A. The CRC shall provide additional supervision when necessary to provide for the safety of all clients.

B. The CRC shall:

1. prohibit weapons of any kind on-site;

2. prohibit glass, hand sanitizer, plastic bags in client-care areas;

3. ensure that all poisonous, toxic and flammable materials are:

a. maintained in appropriate containers and labeled as to the contents;

b. securely stored in a locked cabinet or closet;

c. are used in such a manner as to ensure the safety of clients, staff and visitors; and

d. maintained only as necessary;

4. ensure that all equipment, furnishing and any other items that are in a state of disrepair are removed and inaccessible to clients until replaced or repaired; and

5. ensure that when potentially harmful materials such as cleaning solvents and/or detergents are used, training is provided to the staff and they are used by staff members only.

C. The CRC shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

D. The CRC shall simulate fire drills and other emergency drills at least once a quarter while maintaining client safety and security during the drills.

E. Required Inspections. The CRC shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations.

F. The CRC shall have an on-going safety program to include:

1. continuous inspection of the facility for possible hazards;

2. continuous monitoring of safety equipment and maintenance or repair when needed;

3. investigation and documentation of all accidents or emergencies; and

4. fire control, evacuation planning and other emergency drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5403. Infection Control

A. The CRC shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases.

B. The CRC shall have an active Infection Control Program that requires:

1. reporting of infectious disease in accordance with OPH guidelines;

2. monitoring of:

a. the spread of infectious disease;

b. hand washing;

c. staff and client education; and

d. incidents of specific infections in accordance with OPH guidelines.

3. corrective actions;

4. a designated Infection Control coordinator who:

a. has education and/or experience in infection control;

b. develops and implements policies and procedures governing the infection control program;

c. takes universal precautions; and

d. strictly adheres to all sanitation requirements.

5. The CRC shall maintain a clean and sanitary environment and shall ensure that:

a. supplies and equipment are available to staff;

b. there is consistent and constant monitoring and cleaning of all areas of the facility;

c. the methods used for cleaning, sanitizing, handling and storing of all supplies and equipment prevent the transmission of infection;

d. directions are posted for sanitizing both kitchen and bathroom and laundry areas;

e. showers and bathtubs are to be sanitized by staff between client usage;

f. clothing belonging to clients must be washed and dried separately from the clothing belonging to other clients; and

g. laundry facilities are used by staff only;

h. food and waste are stored, handled, and removed in a way that will not spread disease, cause odor, or provide a breeding place for pests;

C. The CRC may enter into a written contract for housekeeping services necessary to maintain a clean and neat environment.

D. Each CRC shall have an effective pest control plan.

E. After discharge of a client, the CRC shall:

1. clean the bed, mattress, cover, bedside furniture and equipment;

2. ensure that mattresses, blankets and pillows assigned to clients are intact and in a sanitary condition; and

3. ensure that the mattress, blankets and pillows used for a client are properly sanitized before assigned to another client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5405. Emergency Preparedness

A. The CRC shall have a written emergency preparedness plan to:

1. maintain continuity of the center's operations in preparation for, during and after an emergency or disaster; and

2. manage the consequences of all disasters or emergencies that disrupt the center's ability to render care and treatment, or threaten the lives or safety of the clients.

B. The CRC shall:

1. post exit diagrams describing how to clear the building safely and in a timely manner;

2. have a clearly labeled and legible master floor plan(s) that indicates:

a. the areas in the facility that are to be used by clients as shelter or safe zones during emergencies;

b. the location of emergency power outlets and whether they are powered;

c. the locations of posted, accessible, emergency information; and

d. what will be powered by emergency generator(s), if applicable;

3. train its employees in emergency or disaster preparedness. Training shall include orientation, ongoing training and participation in planned drills for all personnel.

C. The CRC's emergency preparedness plan shall include the following information, at a minimum.

1. If the center evacuates, the plan shall include:

a. provisions for the evacuation of each client and delivery of essential services to each client;

b. the center's method of notifying the client's family or caregiver, if applicable, including:

i. the date and approximate time that the facility or client is evacuating;

ii. the place or location to which the client(s) is evacuating which includes the name, address and telephone number; and

iii. a telephone number that the family or responsible representative may call for information regarding the client's evacuation;

c. provisions for ensuring that supplies, medications, clothing and a copy of the treatment plan are sent with the client, if the client is evacuated;

d. the procedure or methods that will be used to ensure that identification accompanies the client including:

i. current and active diagnosis;

ii. medication, including dosage and times administered;

iii. allergies;

iv. special dietary needs or restrictions; and

v. next of kin, including contact information if applicable.

e. transportation or arrangements for transportation for an evacuation;

2. provisions for staff to maintain continuity of care during an emergency as well as for distribution and assignment of responsibilities and functions;

3. the delivery of essential care and services to clients who are housed in the facility or by the facility at another location, during an emergency or disaster;

4. the determination as to when the facility will shelter in place and when the facility will evacuate for a disaster or emergency and the conditions that guide these determinations in accordance with local or parish OSHEP.

5. If the center shelters in place, provisions for seven days of necessary supplies to be provided by the center prior to the emergency, including drinking water or fluids and non-perishable food.

D. The center shall:

1. follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency;

2. if the state, parish or local OHSEP orders a mandatory evacuation of the parish or the area in which the agency is serving, shall ensure that all clients are evacuated according to the facility's emergency preparedness plan;

3. not abandon a client during a disaster or emergency;

4. review and update its emergency preparedness plan at least once a year;

5. cooperate with the department and with the local or parish OHSEP in the event of an emergency or disaster and shall provide information as requested;

6. monitor weather warnings and watches as well as evacuation order from local and state emergency preparedness officials;

7. upon request by the department, submit a copy of its emergency preparedness plan for review;

8. upon request by the department, submit a written summary attesting to how the plan was followed and executed to include, at a minimum:

a. pertinent plan provisions and how the plan was followed and executed;

b. plan provisions that were not followed;

c. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;

d. contingency arrangements made for those plan provisions not followed; and

e. a list of all injuries and deaths of clients that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes and circumstances of the injuries and deaths.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§5407. Inactivation of License due to a Declared Disaster or Emergency

A. A CRC located in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766, may seek to inactivate its license for a period not to exceed one year, provided that the center:

1. submits written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the CRC has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the CRC intends to resume operation as a CRC in the same service area;

c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;

d. includes an attestation that all clients have been properly discharged or transferred to another facility; and

e. lists the clients and the location of the discharged or transferred clients;

2. resumes operating as a CRC in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil fines; and

4. continues to submit required documentation and information to the department.

B. Upon receiving a completed request to inactivate a CRC license, the department shall issue a notice of inactivation of license to the CRC.

C. In order to obtain license reinstatement, a CRC with a department-issued notice of inactivation of license shall:

1. submit a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening that includes:

a. the anticipated date of opening, and a request to schedule a licensing survey;

b. a completed licensing application and other required documents with licensing fees, if applicable; and

c. written approvals for occupancy from OSFM and OPH recommendation for license.

D. Upon receiving a completed written request to reinstate a CRC license and other required documentation, the department shall conduct a licensing survey.

E. If the CRC meets the requirements for licensure and the requirements under this Subsection, the department shall issue a notice of reinstatement of the center's license.

F. During the period of inactivation, the department prohibits:

1. a change of ownership (CHOW) in the CRC; and
2. an increase in the licensed capacity from the CRC's licensed capacity at the time of the request to inactivate the license.

G. The provisions of this Section shall not apply to a CRC which has voluntarily surrendered its license.

H. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the CRC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:2180.14.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

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 a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by allowing licensure for freestanding Crisis Receiving Centers which will provide intervention and stabilization services for behavioral health clients so they can be stabilized, discharged, and referred to the appropriate level of care.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it is expected to reduce the costs associated with the treatment of behavioral health conditions which will ease the financial burden on families.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Crisis Receiving Centers Licensing Standards

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

It is anticipated that implementation of this proposed Rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 14-15. It is anticipated that $10,250 (SGF) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will increase revenue collections to the department by approximately $1,800 for FY 14-15, $1,800 for FY 15-16, and $1,800 for FY 16-17 as a result of the collection of annual fees from the licensing of Level III crisis receiving centers (CRCs).

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

This proposed Rule continues the provisions of the October 20, 2014 Emergency Rule to establish licensing standards for free-standing Level III crisis receiving centers in order to provide intervention and crisis stabilization services for individuals who are experiencing a behavioral health crisis (anticipate approximately 3 facilities being licensed). It is anticipated that implementation of this proposed Rule will have economic costs to Level III CRCs of approximately $600 annually, and will benefit all Level III CRCs by providing up-to-date licensing requirements for operation in the state of Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This Rule has no known effect on competition and employment.

Cecile Castello	Evan Brasseaux
Health Standards Section Director	Staff Director
1410#071	Legislative Fiscal Office

NOTICE OF INTENT

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 Waiver
(LAC 50:XXI.11107, 11303, 11527,
11529, 11703, 11901, 11905, and 12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.11107, §11303, §§11527-11529, §11703 and Chapters 119-121 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amended the provisions governing the children choice waiver to extend the time period for the allocation of waiver opportunities in the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 40, Number 3), and to revise the provisions governing the allocation of waiver opportunities (*Louisiana Register*, Volume 40, Number 3).

The department now proposes to amend the children's choice waiver to clarify the provisions of the waiver in order to ensure compliance with federal regulations, and to remove applied behavior analysis (ABA) as a covered service because ABA services are now covered under the Medicaid state plan.

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. The order of entry in the children's choice waiver is first come, first served from a statewide list arranged by date of application for the developmental disabilities request for services registry for the new opportunities waiver (NOW). Families shall be given a choice of accepting an opportunity in the children's choice waiver or remaining on the DDRFSR for the NOW.

A.1. - B.1.b. …

C. Four hundred twenty-five opportunities shall be designated for qualifying children with developmental disabilities that have been identified by the local governing entity (LGE) as needing more family support services than what is currently available through state funded family support services.

1. To qualify for these waiver opportunities, children must:

a. ...

b. be designated by the LGE as meeting priority level 1 or 2 criteria;

c. - e. …

2. Each LGE shall be responsible for the prioritization of these opportunities. Priority levels shall be defined according to the following criteria.

a. Priority Level 1. Without the requested supports, there is an immediate or potential threat of out-of-home placement or homelessness due to:

i. - iii. …

iv. death or inability of the caregiver to continue care due to his/her own age or health; or

v. …

b. Priority Level 2. Supports are needed to prevent the individual's health from deteriorating or the individual from losing any of his/her independence or productivity.

3. …

4. Each LGE shall have a specific number of these opportunities designated to them for allocation to waiver participants.

5. In the event one of these opportunities is vacated, the opportunity shall be returned to the allocated pool for that particular LGE for another opportunity to be offered.

6. …

D. The Office for Citizens with Developmental Disabilities (OCDD) has the responsibility to monitor the utilization of children's choice waiver opportunities. At the discretion of the OCDD, specifically allocated waiver opportunities may be reallocated to better meet the needs of individuals with developmental disabilities.

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 40:539, 540 (March 2014), LR 41:

Chapter 113. Service
§11303. Service Definitions

A. - E.1. …

2. Family training must be prior approved by the LGE and incorporated into the approved plan of care.

3. - 4. …

F. Family support services are services that enable a family to keep their child or family member at home, thereby enhancing family functioning. Services may be provided in the home or outside of the home in settings such as after school programs, summer camps, or other places as specified in the approved plan of care.

1. Family support includes:

a. assistance and prompting with eating, bathing, dressing, personal hygiene, and essential housekeeping incidental to the care of the child, rather than the child's family. The preparation of meals is included, but not the cost of the meals themselves; and

b. assistance with participating in the community, including activities to maintain and strengthen existing informal networks and natural supports. Providing transportation to these activities is also included.

2. Family members who provide family support services must meet the same standards of service, training requirements and documentation requirements as caregivers who are unrelated to the participant. Services cannot be provided by the following individuals:

a. legally responsible relatives (spouses, parents or step-parents, foster parents, or legal guardians); or

b. any other individuals who live in the same household with the waiver participant.

3. - 3.b. Repealed.

G. - G.7.j. …

H. Aquatic Therapy

1. Aquatic therapy uses the resistance of water to rehabilitate a participant with a chronic illness, poor or lack of muscle tone or a physical injury/disability.

2. Aquatic therapy is not for participants who have fever, infections and are bowel/ bladder incontinent.

3. Repealed.

I. Art Therapy

1. Art therapy is used to increase awareness of self and others; cope with symptoms, stress and traumatic experiences; enhance cognitive abilities; and as a mode of communication and enjoyment of the life-affirming pleasure of making art.

2. Art therapy is the therapeutic use of art by people who experience illness, trauma, emotional/behavioral or mental health problems; by those who have learning or physical disabilities, life-limiting conditions, brain injuries or neurological conditions and/or challenges in living; and by people who strive to improve personal development.

J. Music Therapy

1. Music therapy services help participants improve their cognitive functioning, motor skills, emotional and affective development, behavior and social skills and quality of life.

2. Repealed.

K. Sensory Integration

1. Sensory integration is used to improve the way the brain processes and adapts to sensory information, as opposed to teaching specific skills. Sensory integration involves activities that provide vestibular, proprioceptive and tactile stimuli which are selected to match specific sensory processing deficits of the child.

L. Hippotherapy/Therapeutic Horseback Riding

1. Hippotherapy/therapeutic horseback riding are services used to promote the use of the movement of the horse as a treatment strategy in physical, occupational and speech-language therapy sessions for people living with disabilities.

2. Hippotherapy improves muscle tone, balance, posture, coordination, motor development as well as motor planning that can be used to improve sensory integration skills and attention skills.

a. Specially trained therapy professionals evaluate each potential participant on an individual basis to determine the appropriateness of including hippotherapy as a treatment strategy.

b. Hippotherapy requires therapy sessions that are one-on-one with a licensed physical therapist, speech therapist or occupational therapist who works closely with the horse professional in developing treatment strategies. The licensed therapist must be present during the hippotherapy sessions.

c. Hippotherapy must be ordered by a physician with implementation of service, treatment strategies and goals developed by a licensed therapist. Services must be included in the participant's plan of care.

3. Therapeutic horseback riding teaches riding skills and improves neurological function and sensory processing.

a. Therapeutic horseback riding must be ordered by a physician with implementation of service, treatment strategies and goals developed by a licensed therapist. Services must be included in the participant's plan of care.

M. Housing Stabilization Transition Services

1. Housing stabilization transition services enable participants who are transitioning into a permanent supportive housing unit, including those transitioning from institutions, to secure their own housing. The service is provided while the participant is in an institution and preparing to exit the institution using the waiver.

2. Housing stabilization transition services include the following components:

a. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

i. access to housing;

ii. meeting the terms of a lease;

iii. eviction prevention;

iv. budgeting for housing/living expenses;

v. obtaining/accessing sources of income necessary for rent;

vi. home management;

vii. establishing credit; and

viii. understanding and meeting the obligations of tenancy as defined in the lease terms;

b. assisting the participant to view and secure housing as needed, which may include arranging for and providing transportation;

c. assisting the participant to secure supporting documents/records, completing/submitting applications, securing deposits, and locating furnishings;

d. developing an individualized housing support plan based upon the housing assessment that:

i. includes short and long term measurable goals for each issue;

ii. establishes the participant's approach to meeting the goal; and

iii. identifies where other provider(s) or services may be required to meet the goal;

e. participating in the development of the plan of care and incorporating elements of the housing support plan; and

f. exploring alternatives to housing if permanent supportive housing is unavailable to support completion of the transition.

3. Housing stabilization transition services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit, or who are linked for the state of Louisiana permanent supportive housing selection process.

a. Repealed.

4. Participants may not exceed 165 combined units of this service and housing stabilization services.

a. Exceptions to exceed the 165 unit limit may be made only with written approval from the Office for Citizens with Developmental Disabilities.

N. Housing Stabilization Services

1. Housing stabilization services enable waiver participants to maintain their own housing as set forth in the participant's approved plan of care. Services must be provided in the home or a community setting.

2. Housing stabilization services include the following components:

a. conducting a housing assessment to identify the participant's preferences related to housing (i.e., type, location, living alone or with someone else, accommodations needed, and other important preferences), and his/her needs for support to maintain housing, including:

i. - vii. …

b. participating in the development of the plan of care and incorporating elements of the housing support plan;

c. developing an individualized housing stabilization service provider plan based upon the housing assessment that includes short and long term measurable goals for each issue, establishes the participant's approach to meeting the goal, and identifies where other provider(s) or services may be required to meet the goal;

d. providing supports and interventions according to the individualized housing support plan (If additional supports or services are identified as needed outside the scope of housing stabilization service, the needs must be communicated to the support coordinator.);

i. - iii. Repealed.

e. providing ongoing communication with the landlord or property manager regarding the participant's disability, accommodations needed, and components of emergency procedures involving the landlord or property manager;

f. updating the housing support plan annually or as needed due to changes in the participant's situation or status; and

g. providing supports to retain housing or locate and secure housing to continue community-based supports if the participant's housing is placed at risk (e.g., eviction, loss of roommate or income); this includes locating new housing, sources of income, etc.

3. Housing stabilization services are only available upon referral from the support coordinator. This service is not duplicative of other waiver services, including support coordination. This service is only available to persons who are residing in a state of Louisiana permanent supportive housing unit.

4. Participants may not exceed 165 combined units of this service and housing stabilization transition services.

a. ...

O. - O.4.a. 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, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, amended LR 36:324 (February 2010), LR 39:2498 (September 2013), LR 40:67 (January 2014), LR 41:

Chapter 115. Providers

Subchapter B. Provider Requirements

§11527. Direct Service Providers

A. - A.1.d. …

e. All services must be performed and completed during the current approved plan of care year. Services that are not completed by the end of the current approved plan of care year will be voided and deemed as non-billable. Services cannot carry over into the next plan of care year.

4. - 7. …

8. The agency shall document that its employees and the employees of subcontractors do not have a criminal record as defined in 42 CFR 441.404(b). Providers of community supported living arrangement services must:

a. not use individuals who have been convicted of child abuse, neglect, or mistreatment, or of a felony involving physical harm to an individual; and

8.b. - 12. …

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 for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1985 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 41:

§11529. Professional Services Providers

A. Professional services are direct services to participants, based on need, that may be utilized to increase the participant's independence, participation and productivity in the home and community. Service intensity, frequency and duration will be determined by individual need. Professional services include the following:

1. aquatic therapy;
2. art therapy;
3. music therapy;
4. sensory integration; and
5. hippotherapy/therapeutic horseback ridng.
6. Repealed.

B. - F. …

G. All services must be documented in service notes which describe the services rendered and progress towards the participant's personal outcomes and his/her plan of care.

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 for Citizens with Developmental Disabilities, LR 39:2501 (September 2013), LR 41:

Chapter 117. Crisis Provisions

§11703. Crisis Designation Criteria

A. - A.2. …

3. the child is committed to the custody of the Department of Health and Hospitals (DHH) by the court; or

A.4. - 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, Office for Citizens with Developmental

Disabilities, Bureau of Health Services Financing, LR 28:1986 (September 2002), amended LR 29:704 (May 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2503 (September 2013), LR 41:

Chapter 119. Noncrisis Provisions

§11901. General Provisions

A. Restoring the participant to the DDRFSR under noncrisis provisions will allow that individual to be placed in the next available waiver opportunity (slot) that will provide the appropriate services, provided the participant is still eligible when a slot becomes available. The fact that the participant is being restored to the DDRFSR does not require that the department immediately offer him/her a waiver slot if all slots are filled or to make a slot available to this participant for which another participant is being evaluated, even though that other participant was originally placed on the DDRFSR on a later date. Waiver services will not be terminated as a result of a participant's name being restored to the registry.

B. …

C. In the event that the waiver eligibility, other than for the developmental disabilities waiver, of a person who elected or whose legal representative elected that he/she receive services under the children's choice waiver is terminated based on inability to assure health and welfare of the waiver participant, the department will restore him/her to the DDRFSR for the developmental disabilities waiver in the date order of the original request.

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 for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1986 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2503 (September 2013), LR 41:

§11905. Determination Responsibilities and Appeals

A. The LGE shall have the responsibility for making the determinations as to the matters set forth in this Chapter 119. Persons who have elected or whose legal representatives have elected that they receive services under the children's choice waiver have the right to appeal any determination of the department as to matters set forth in this Chapter 119, under the regulations and procedures applicable to Medicaid fair hearings.

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 for Citizens with Developmental Disabilities, Bureau of Health Services Financing, LR 28:1987 (September 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 39:2504 (September 2013), LR 41:

Chapter 121. Reimbursement

§12101. Reimbursement Methodology

A. - B. …

1. Family support, crisis support, center-based respite, aquatic therapy, art therapy, music therapy, sensory integration, and hippotherapy/therapeutic horseback riding services shall be reimbursed at a flat rate per 15-minute unit of service, which covers both service provision and administrative costs.

2. - 4. …

a. Effective February 9, 2007, an hourly wage enhancement payment in the amount of $2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide family support services to children's choice participants.

b. Effective May 20, 2007, an hourly wage enhancement payment in the amount of $2 will be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide center-based respite services to children's choice participants.

B.4.c. - D.1.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, Office of the Secretary, Bureau of Health Services Financing, LR 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:324 (February 2010), LR 36:2280 (October 2010), LR 37:2157 (July 2011), LR 39:2504 (September 2013), LR 40:68 (January 2014), LR 41:

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

Family Impact Statement

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

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O.

Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based Services Waivers—Children's Choice Waiver

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 14-15. It is anticipated that $1,886 ($943 SGF and $943 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

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

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 14-15. It is anticipated that $943 will be collected in FY 14-15 for the federal share of the expense for promulgation of this proposed Rule and the final Rule.

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

This proposed Rule is being promulgated to clarify the provisions of the Children's Choice Waiver, ensure compliance with federal regulations, and remove Applied Behavior Analysis (ABA) as a covered service because these services are now covered under the Medicaid State Plan. It is anticipated that implementation of this proposed Rule will not have economic cost or benefits to Children's Choice Waiver service providers for FY 14-15, FY 15-16, and FY 16-17 and no fiscal impact to Medicaid Program expenditures because the waiver is a capped waiver; however, there is a potential impact to Medicaid expenditures by an indeterminable amount for recipients who access ABA services through the State Plan benefit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy
Medicaid Director
1410#072

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Hospice Services (LAC 50:XV.Chapters 33-43)

The Department of Health and Hospitals, Bureau of Health Services Financing, proposes to amend LAC 50:XV.Chapters 33-43 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA) and also amended the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program (*Louisiana Register*, Volume 38, Number 3). The department promulgated a Notice of Intent which further revised and clarified the provisions governing hospice services (*Louisiana Register*, Volume 39, Number 11). The department subsequently promulgated an Emergency Rule which amended the provisions of the May 1, 2012 Emergency Rule to incorporate the revisions made in the Notice of Intent and to revise the formatting of these provisions in order to ensure that the provisions are promulgated in a clear and concise manner (*Louisiana Register*, Volume 39, Number 11). As a result of comments received, the department abandoned the Notice of Intent published in the November 20, 2013 edition of the *Louisiana Register*.

The department promulgated an Emergency Rule which amended the November 20, 2013 Emergency Rule to further clarify the provisions governing prior authorization for hospice services (*Louisiana Register*, Volume 40, Number 3). The department subsequently promulgated an Emergency Rule which amended the March 20, 2014 Emergency Rule to revise the provisions governing prior authorization for hospice services to incorporate language approved in the corresponding state plan amendment in order to ensure compliance with federal regulations (*Louisiana Register*, Volume 40, Number 10). This proposed Rule is being promulgated to continue the provisions of the October 20, 2014 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 3. Hospice
Chapter 33. Provider Participation
§3301. Conditions for Participation

A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

1.c. - 2. Repealed.

B. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 35. Recipient Eligibility

§3501. Election of Hospice Care

A. - B. …

1. The election must be filed by the eligible individual or by a person authorized by law (legal representative) to consent to medical treatment for such individual.

a. A legal representative does not have the authority to elect, revoke, or appeal the denial of hospice services if the recipient is able to and wishes to convey a contrary choice.

B.2. - F. …

G. Election Statement Requirements. The election statement must include:

1. …

2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;

3. - 4. …

5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;

2. does not revoke the election under the provisions of §3505; and

3. is not discharged from hospice in accordance with §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§3503. Waiver of Payment for Other Services

A. Individuals who are 21 and over may be eligible for additional personal care services as defined in the Medicaid state plan. Services furnished under the personal care services benefit may be used to the extent that the hospice provider would routinely use the services of the hospice patient's family in implementing the patient's plan of care. The hospice provider must provide services to the individual that are comparable to the services they received through Medicaid prior to their election of hospice. These services include, but are not limited to:

1. pharmaceutical and biological services;

2. durable medical equipment; and

a. - c. Repealed.

3. any other services permitted by federal law;

4. the services listed in §3503.A.1-3 are for illustrative purposes only. The hospice provider is not exempt from providing care if an item or category is not listed.

B. Individuals under age 21 who are approved for hospice may continue to receive curative treatments for their terminal illness; however, the hospice provider is responsible to coordinate all curative treatments related to the terminal illness.

1. *Curative Treatments*—medical treatment and therapies provided to a patient with the intent to improve symptoms and cure the patient's medical problem. Antibiotics, chemotherapy, a cast for a broken limb are examples of curative care.

2. Curative care has as its focus the curing of an underlying disease and the provision of medical treatments to prolong or sustain life.

3. The hospice provider is responsible to provide durable medical equipment or contract for the provision of durable medical equipment. Personal care services, extended home health, and pediatric day health care must be coordinated with hospice services pursuant to §3705.C.

C. Individuals who elect hospice services may also receive early and periodic screening, diagnosis and treatment (EPSDT) personal care services (PCS) concurrently. The hospice provider and the PCS provider must coordinate services and develop the patient's plan of care as set forth in §3705.

D. The hospice provider is responsible for making a daily visit to all clients under the age of 21 and for the coordination of care to assure there is no duplication of services. The daily visit is not required if the person is not in the home due to hospitalization or inpatient respite or inpatient hospice stays.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§3505. Revoking the Election of Hospice Care/Discharge

A. - A.4.b. …

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any time file an election, in accordance with §3501, for any other election period that is still available to the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 37. Provider Requirements

§3701. Requirements for Coverage

A. To be covered, a certification of terminal illness must be completed as set forth in §3703, the election of hospice care form must be completed in accordance with §3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the certificate of terminal illness.

B. Prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§3703. Certification of Terminal Illness

A. …

1. For the first 90-day period of hospice coverage, the hospice must obtain a verbal certification no later than two calendar days after hospice care is initiated. If the verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within 10 calendar days following the initiation of hospice care. The written certification and notice of election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day certification, i.e., the date all certification forms are obtained.

a. - c. Repealed.

2. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2.a. - 4. Repealed.

B. Face-to-Face Encounter

1. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The face-to-face encounter must occur no more than 30 calendar days prior to the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

2. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

C. Content of Certifications

1. Certifications shall be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness.

2. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

3. Written clinical information and other documentation that support the medical prognosis must accompany the certification of terminal illness and must be based on the physician's clinical judgment regarding the normal course of the individual's illness filed in the medical record with the written certification, as set forth in §3703.C.

4. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms, or as an addendum to the certification/recertification forms:

a. if the physician includes an addendum to the certification and recertification forms, it shall include, at a minimum:

i. the patient's name;

ii. physician's name;

iii. terminal diagnosis(es);

iv. prognosis; and

v. the name and signature of the IDG member making the referral;

b. the narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients;

c. the narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted;

d. prognosis; and

e. the name and signature of the IDG member taking the referral.

5. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

D. Sources of Certification

1. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

a. the hospice's medical director or physician member of the hospice's interdisciplinary group; and

b. the individual's referring physician.

i. The referring physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

ii. The referring physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

2. For subsequent periods, the only requirement is certification by either the medical director of the hospice or the physician member of the hospice interdisciplinary group.

E. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§3705. Plan of Care

A. - B. …

C. When developing the plan of care (POC), the hospice provider must consult with, and collaborate with the recipient, his/her caregiver, and his/her long-term personal

care services provider, and if the recipient is under age 21, his/her extended home nursing provider and/or pediatric day health care provider. If the recipient is receiving any of these services at the time of admission to hospice, the hospice provider must ensure that the POC clearly and specifically details the services and tasks, along with the frequency, to be performed by the non-hospice provider(s), as well as the services and tasks, along with the frequency, that are to be performed by the hospice provider to ensure that services are non-duplicative and that the recipient's needs are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 39. Covered Services

§3901. Medical and Support Services

A. - A.11.b.iv. …

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. General Inpatient Care Day. A general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility that meets the standards as provided in 42 CFR §418.98(a) and for the purpose of pain control or acute or chronic symptom management which cannot be managed in other settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 41. Prior Authorization

§4101. Prior Authorization of Hospice Services

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. The Medicare criteria found in local coverage determination (LCD) hospice determining terminal status (L32015) will be used in analyzing information provided by the hospice to determine if the patient meets clinical requirements for this program.

2. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice recipient, recipient's legal representative, and nursing facility, if appropriate.

C. Reconsideration. Claims will only be paid from the date of the hospice notice of election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization request is received 10 days or more after the date on the hospice notice of election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

D. Appeals. If the recipient does not agree with the denial of a hospice prior authorization request, the recipient, the recipient's legal representative, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Chapter 43. Reimbursement

§4303. Levels of Care for Payment

A. - B.3. …

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. …

2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§4305. Hospice Payment Rates

A. - A.2. …

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

b. - d.ii. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§4307. Payment for Long Term Care Residents

A. …

1. who is residing in a nursing facility or intermediate care facility for persons with intellectual disabilities (ICF/ID);

2. who would be eligible under the state plan for nursing facility services or ICF/ID services if he or she had not elected to receive hospice care;

3. …

4. for whom the hospice agency and the nursing facility or ICF/ID have entered into a written agreement in accordance with the provisions set forth in the licensing standards for hospice agencies (LAC 48:I.Chapter 82), under which the hospice agency takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual.

B. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1471 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1894 (September 2009), LR 41:

§4309. Limitation on Payments for Inpatient Care

A. …

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient days for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b.…

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Family Impact Statement

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

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 at 9:30 a.m. in Room 173, 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Hospice 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 general fund programmatic savings of $1,076,718 for FY 14-15, $1,102,886 for FY 15-16 and $1,133,261 for FY 16-17. It is anticipated that $1,722 ($861 SGF and $861 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will reduce federal revenue collections by approximately $1,761,779 for FY 14-15, $1,822,540 for FY 15-16 and $1,879,928 for FY 16-17. It is anticipated that $861 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final Rule. The

numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the October 20, 2014 Emergency Rule which amended the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA), and amended the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program, and further revised and clarified these provisions. It is anticipated that implementation of this proposed rule will decrease program expenditures in the Medicaid Program by approximately $2,840,219 for FY 14-15, $2,925,426 for FY 15-16 and $3,013,189 for FY 16-17.

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. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to hospice providers. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1410#073	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Supplemental Payments
(LAC 50:V.953)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.953 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX. 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 Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates paid to non-rural, non-state hospitals (*Louisiana Register*, Volume 40, Number 2).

Due to a continuing budgetary shortfall in SFY 2014, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the total supplemental payments pool for non-rural, non-state hospitals and to change the frequency of payments (*Louisiana Register*, Volume 39, Number 11). This proposed Rule is being promulgated to continue the provisions of the November 20, 2013 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
§953. Acute Care Hospitals

A. - S. ...

T. Effective for dates of service on or after November 20, 2013, supplemental payments to non-rural, non-state acute care hospitals that qualify as a high Medicaid hospital shall be annual. The amount appropriated for annual supplemental payments shall be reduced to $1,000,000. Each qualifying hospital's annual supplemental payment shall be calculated based on the pro rata share of the reduced appropriation.

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 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:1896 (September 2009), repromulgated LR 35:2182 (October 2009), amended LR 36:1552 (July 2010), LR 36:2561 (November 2010), LR 39:3095 (November 2013), LR 39:3297 (December 2013), LR 40:312 (February 2014), LR 41:

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

Family Impact Statement

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

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may increase the total direct and indirect cost of the provider to provide the same level of service, and may affect the provider's ability to provide the same level of service since this proposed Rule may decrease payments to providers for the same services they already render.

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 or by email to

MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Inpatient Hospital Services—Non-Rural, Non-State Hospitals—Supplemental Payments

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 general fund programmatic savings of $1,488,981 for FY 14-15, $1,479,725 for FY 15-16 and $1,476,192 for FY 16-17. It is anticipated that $328 ($164 SGF and $164 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed Rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will decrease federal revenue collections by approximately $2,435,691 for FY 14-15, $2,445,275 for FY 15-16 and $2,448,808 for FY 16-17. It is anticipated that $164 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the November 20, 2013 Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services to reduce the total supplemental payments pool for non-rural, non-state hospitals, and to change the frequency of payments. It is anticipated that implementation of this proposed Rule will reduce program expenditures for inpatient hospital services by approximately $3,925,000 for FY 14-15, $3,925,000 for FY 15-16 and $3,925,000 for FY 16-17.

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. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the overall payments made to non-rural, non-state hospitals. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1410#074	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Managed Care for Physical and Basic Behavioral Health
(LAC 50:I.Chapters 31-40)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:I.Chapters 31-40 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions which implemented a coordinated system of care in the Medicaid Program designed to improve quality of care and health care outcomes through a healthcare delivery system of coordinated care networks named the Bayou Health program (*Louisiana Register*, Volume 37, Number 6).

The department now proposes to amend the provisions governing the coordinated care network in order to change the name in this Subpart to Managed Care for Physical and Basic Behavioral Health and to incorporate other necessary programmatic changes. This Notice of Intent will also incorporate provisions to permit Medicaid eligible children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* class action litigation (hereafter referred to as Chisholm class members) to have the option of voluntarily enrolling into a participating health plan under the Bayou Health program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 3. Managed Care for Physical and Basic Behavioral Health
Chapter 31.General Provisions
§3101. Introduction

A. It is the department's goal to operate a managed health care delivery system that:

1. improves access to care and care coordination;
2. improves the quality of services;
3. promotes healthier outcomes for Medicaid recipients through the establishment of a medical home system of care;
4. provides budget stability; and
5. results in savings as compared to an unmanaged fee-for-service system.

B. Effective for dates of service on or after February 1, 2015, the department will operate a managed care delivery

system for physical and basic behavioral health, named the Bayou Health program, utilizing one model, a risk bearing managed care organization (MCO), hereafter referred to as an "MCO".

1. - 2. Repealed.

C. The department will continue to administer the determinations of savings realized or refunds due to the department for dates of service from February 1, 2012 through January 31, 2015 as described in the primary care case management plan (CCN-S) contract.

D. It is the department's intent to procure the provision of healthcare services statewide to Medicaid enrollees participating in the Bayou Health program from risk bearing MCOs through the competitive bid process.

1. The number of MCOs shall be no more than required to meet the Medicaid enrollee capacity requirements and ensure choice for Medicaid recipients as required by federal statute.

1.a. - 2. 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, LR 37:1573 (June 2011), amended LR 41:

§3103. Recipient Participation

A. The following Medicaid recipients shall be mandatory participants in coordinated care networks:

1. categorically needy individuals:

a. - e. …

f. children enrolled in the Title XXI stand-alone CHIP program for low-income children under the age of 19 who do not otherwise qualify for Medicaid (LaCHIP Affordable Plan);

g. persons eligible through the Tuberculosis Infected Individual Program;

h. individuals who are Native Americans/Alaskan Natives and members of a federally recognized tribe; or

i. children under the age of 19 who are:

i. eligible under §1902(e)(3) of the Act and receiving supplemental security income (SSI);

ii. in foster care or other out-of-home placement;

iii. receiving foster care or adoption assistance;

iv. receiving services through a family-centered, community-based coordinated care system that receives grant funds under §501(a)(1)(D) of title V, and is defined by the department in terms of either program participation of special health care needs; or

v. enrolled in the Family Opportunity Act Medicaid Buy-In Program;

2. - 3. …

B. Voluntary Participants

1. Participation in an MCO is voluntary for

a. individuals who receive home and community-based waiver services; and

i. - ii. Repealed.

b. effective February 1, 2015, children under the age of 21 who are listed on the new opportunities waiver request for services registry. These children are identified as Chisholm class members:

i. For purposes of these provisions, Chisholm class members shall be defined as those children identified in the *Melanie Chisholm, et al vs. Kathy Kliebert* (or her successor) class action litigation.

ii. Chisholm class members and home and community-based waiver recipients shall be exempt from the auto-assignment process and must proactively seek enrollment into an available health plan.

1.b.iii. - 2. Repealed.

C. …

D. Participation Exclusion

1. The following Medicaid and/or CHIP recipients are excluded from participation in an MCO and cannot voluntarily enroll in an MCO. Individuals who:

a. - d. …

e. are participants in the Take Charge Plus Program; or

f. are participants in the Greater New Orleans Community Health Connection (GNOCHC) Program.

g. Repealed.

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, Bureau of Health Services Financing, LR 37:1573 (June 2011), amended LR 40:310 (February 2014), LR 40:1096 (June 2014), LR 41:

§3105. Enrollment Process

A. The MCO shall abide by all enrollment and disenrollment policy and procedures as outlined in the contract developed by the department.

B. The department will contract with an enrollment broker who will be responsible for the enrollment and disenrollment process for MCO participants. The enrollment broker shall be:

1. the primary contact for Medicaid recipients regarding the MCO enrollment and disenrollment process, and shall assist the recipient to enroll in an MCO;

2. the only authorized entity, other than the department, to assist a Medicaid recipient in the selection of an MCO; and

3. responsible for notifying all MCO members of their enrollment and disenrollment rights and responsibilities within the timeframe specified in the contract.

C. Enrollment Period. The annual enrollment of an MCO member shall be for a period of up to 12 months from the date of enrollment, contingent upon his/her continued Medicaid and MCO eligibility. A member shall remain enrolled in the MCO until:

1. DHH or its enrollment broker approves the member's written, electronic or oral request to disenroll or transfer to another MCO for cause; or

2. …

3. the member becomes ineligible for Medicaid and/or the MCO program.

D. Enrollment of Newborns. Newborns of Medicaid eligible mothers who are enrolled at the time of the newborn's birth will be automatically enrolled with the mother's MCO, retroactive to the month of the newborn's birth.

1. If there is an administrative delay in enrolling the newborn and costs are incurred during that period, the member shall be held harmless for those costs and the MCO shall pay for these services.

2. The MCO and its providers shall be required to:

a. report the birth of a newborn within 48 hours by requesting a Medicaid identification (ID) number through

the department's online system for requesting Medicaid ID numbers; and

b. complete and submit any other Medicaid enrollment form required by the department.

E. Selection of an MCO

1. As part of the eligibility determination process, Medicaid and LaCHIP applicants, for whom the department determines eligibility, shall receive information and assistance with making informed choices about participating MCOs from the enrollment broker. These individuals will be afforded the opportunity to indicate the plan of their choice on their Medicaid financial application form or in a subsequent contract with the department prior to determination of Medicaid eligibility.

2. All new recipients who have made a proactive selection of an MCO shall have that MCO choice transmitted to the enrollment broker immediately upon determination of Medicaid or LaCHIP eligibility. The member will be assigned to the MCO of their choosing unless the plan is otherwise restricted by the department.

a. - a.i. …

3. All new recipients shall be immediately automatically assigned to an MCO by the enrollment broker if they did not select an MCO during the financial eligibility determination process.

4. All new recipients will be given 90 days to change plans if they so choose.

a. Recipients of home and community-based services and Chisholm class members shall be exempt from automatic assignment to an MCO.

b. - d. Repealed.

5. The following provisions will be applicable for recipients who are mandatory participants.

a. If there are two or more MCOs in a department designated service area in which the recipient resides, they shall select one.

b. Recipients may request to transfer out of the MCO for cause and the effective date of enrollment shall be no later than the first day of the second month following the calendar month that the request for disenrollment is filed.

F. Automatic Assignment Process

1. The following participants shall be automatically assigned to an MCO by the enrollment broker in accordance with the department's algorithm/formula and the provisions of §3105.E:

a. mandatory MCO participants;

b. - c. …

2. MCO automatic assignments shall take into consideration factors including, but not limited to:

a. assigning members of family units to the same MCO;

b. existing provider-enrollee relationships;

c. previous MCO-enrollee relationship;

d. MCO capacity; and

e. MCO performance outcome indicators.

3. MCO assignment methodology shall be available to recipients upon request to the enrollment broker.

4. Repealed.

G. Selection or Automatic Assignment of a Primary Care Provider

1. The MCO is responsible to develop a PCP automatic assignment methodology in accordance with the department's requirements for the assignment of a PCP to an enrollee who:

a. does not make a PCP selection after being offered a reasonable opportunity by the MCO to select a PCP;

b. selects a PCP within the MCO that has reached their maximum physician/patient ratio; or

c. selects a PCP within the MCO that has restrictions/limitations (e.g. pediatric only practice).

2. The PCP automatically assigned to the member shall be located within geographic access standards, as specified in the contract, of the member's home and/or who best meets the needs of the member. Members for whom an MCO is the secondary payor will not be assigned to a PCP by the MCO, unless the member requests that the MCO do so.

a. - d. Repealed.

3. If the enrollee does not select an MCO and is automatically assigned to a PCP by the MCO, the MCO shall allow the enrollee to change PCP, at least once, during the first 90 days from the date of assignment to the PCP. Effective the ninety-first day, a member may be locked into the PCP assignment for a period of up to nine months beginning from the original date that he/she was assigned to the MCO.

4. If a member requests to change his/her PCP for cause at any time during the enrollment period, the MCO must agree to grant the request.

5. Repealed.

H. Lock-In Period

1. Members have 90 days from the initial date of enrollment into an MCO in which they may change the MCO for any reason. Medicaid enrollees may only change MCOs without cause within the initial 90 days of enrollment in an MCO. After the initial 90-day period, Medicaid enrollees/members shall be locked into an MCO until the annual open enrollment period, unless disenrolled under one of the conditions described in this Section.

2. Repealed.

I. Annual Open Enrollment

1. The department will provide an opportunity for all MCO members to retain or select a new MCO during an annual open enrollment period. Notification will be sent to each MCO member and voluntary members who have opted out of participation in Bayou health at least 60 days prior to the effective date of the annual open enrollment. Each MCO member shall receive information and the offer of assistance with making informed choices about MCOs in their area and the availability of choice counseling.

2. Members shall have the opportunity to talk with an enrollment broker representative who shall provide additional information to assist in choosing the appropriate MCO. The enrollment broker shall provide the individual with information on each MCO from which they may select.

3. During the open enrollment period, each Medicaid enrollee shall be given the option to either remain in their existing MCO or select a new MCO. The 90-day option to change is not applicable to MCO linkages as a result of open enrollment.

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

37:1574 (June 2011), amended LR 40:310 (February 2014), LR 40:1097 (June 2014), LR 41:

§3107. Disenrollment and Change of Managed Care Organization

A. A member may request disenrollment from an MCO for cause at any time, effective no later than the first day of the second month following the month in which the member files the request.

B. A member may request disenrollment from an MCO without cause at the following times:

1. during the 90 days following the date of the member's initial enrollment with the MCO or the date the department sends the member notice of the enrollment, whichever is later;

2. - 3. …

4. if the department imposes the intermediate sanction against the MCO which grants enrollees the right to terminate enrollment without cause and notifies the affected enrollees of their right to disenroll.

C. - C.4. …

D. Disenrollment for Cause

1. A member may initiate disenrollment or transfer from their assigned MCO after the first 90 days of enrollment for cause at any time. The following circumstances are cause for disenrollment:

a. the MCO does not, because of moral or religious objections, cover the service that the member seeks;

b. the member needs related services to be performed at the same time, not all related services are available within the MCO and the member's PCP or another provider determines that receiving the services separately would subject the member to unnecessary risk;

c. the contract between the MCO and the department is terminated;

d. to implement the decision of a hearing officer in an appeal proceeding by the member against the MCO or as ordered by a court of law; and

e. other reasons including, but not limited to:

i. poor quality of care;

ii. lack of access to services covered under the contract; or

iii. documented lack of access to providers experienced in dealing with the enrollee's health care needs.

f. - i.iii. Repealed.

E. Involuntary Disenrollment

1. The MCO may submit an involuntary disenrollment request to the enrollment broker, with proper documentation, for the following reasons:

a. fraudulent use of the MCO identification card. In such cases, the MCO shall report the incident to the Bureau of Health Services Financing; or

b. the member's behavior is disruptive, unruly, abusive or uncooperative to the extent that his/her enrollment seriously impairs the MCO's ability to furnish services to either the member or other members.

2. The MCO shall promptly submit such disenrollment requests to the enrollment broker. The effective date of an involuntary disenrollment shall not be earlier than 45 calendar days after the occurrence of the event that prompted the request for involuntary disenrollment. The MCO shall ensure that involuntary disenrollment documents are maintained in an identifiable member record.

3. All requests will be reviewed on a case-by-case basis and subject to the sole discretion of the department. All decisions are final and are not subject to MCO dispute or appeal.

4. The CCN may not request disenrollment because of a member's:

a. - f. …

g. uncooperative or disruptive behavior resulting from his or her special needs, unless it seriously impairs the MCO's ability to furnish services to either this particular member or other members as defined in this Subsection;

h. attempt to exercise his/her rights under the MCO's grievance system; or

i. …

F. Department Initiated Disenrollment

1. The department will notify the MCO of the member's disenrollment due to the following reasons:

a. loss of Medicaid eligibility or loss of MCO enrollment eligibility;

b. - f. …

g. member is placed in a nursing facility or intermediate care facility for persons with intellectual disabilities;

h. loss of MCO's participaqion.

i. - k. Repealed.

G. If the MCO ceases participation in the Medicaid Program, the MCO shall notify the department in accordance with the termination procedures described in the contract.

1. The enrollment broker will notify MCO members of the choices of remaining MCOs.

2. The exiting MCO shall assist the department in transitioning the MCO members to another MCO.

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 37:1575 (June 2011), amended LR 40:311 (February 2014), LR 41:

§3109. Member Rights and Responsibilities

A. The MCO member's rights shall include, but are not limited to the right to:

1. - 5. …

6. express a concern about their MCO or the care it provides, or appeal an MCO decision, and receive a response in a reasonable period of time;

7. - 8. …

9. implement an advance directive as required in federal regulations:

a. the MCO must provide adult enrollees with written information on advanced directive policies and include a description of applicable state law. The written information must reflect changes in state law as soon as possible, but no later than 90 days after the effective date of change;

9.b. - 11. …

B. Members shall have the freedom to exercise the rights described herein without any adverse effect on the member's treatment by the department or the MCO, or its contractors or providers.

C. The MCO member's responsibilities shall include, but are not limited to:

1. informing the MCO of the loss or theft of their MCO identification card;

2. …

3. being familiar with the MCO's policies and procedures to the best of his/her abilities;

4. contacting the MCO, by telephone or in writing (formal letter or electronically, including email), to obtain information and have questions clarified;

5. - 8. …

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 37:1576 (June 2011), amended LR 40:311 (February 2014), LR 41:

Chapter 33. Coordinated Care Network Shared Savings Model

§3301. Participation Requirements

A. In order to participate in the Bayou Health Program after January 31, 2015, a coordinated care network shared savings model (CCN-S) must be an entity that operated as a CCN-S contracted with the department during the period of February 1, 2012 through January 31, 2015.

B. Participation in the Bayou Health program shared savings model after January 31, 2015 is for the exclusive purpose of fully executing provisions of the CCN-S contract relative to the determinations of savings realized or refunds due to the department for CCN-S operations during the period of February 1, 2012 through January 31, 2015.

1. - 8. Repealed.

C. A CCN-Sis required to maintain a surety bond for an amount specified by the department for the at-risk portion of the enhanced care management fee through the full execution of the provisions of the CCN-S contract relative to determinations of savings realized or refunds due to the department for CCN-S operations during the period of February 1, 2012 through January 31, 2015 as determined by the department.

C.1. - J.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, Bureau of Health Services Financing, LR 37:1577 (June 2011), amended LR 41:

§3303. Shared Savings Model Responsibilities

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, LR 37:1578 (June 2011), LR 40:66 (January 2014), amended LR 40:311 (February 2014), repealed LR 41:

§3305. Coordination of Medicaid State Plan Services

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, LR 37:1579 (June 2011), repealed LR 41:

§3307. Reimbursement Methodology

A. The department or its fiscal intermediary shall make lump sum savings payments to the CCN-S, if eligible, as described in the CCN-S contract.

B. The department will determine savings realized or refunds due to the department on a periodic basis.

1. The department may make an interim determination and will make a final determination of savings achieved or refunds due for each CCN-S for each contract year.

a. Interim determinations may be made for less than 12 months of service during the contract year. For dates of service with less than 12 months of elapsed time after the end of the contract period an adjustment for incurred but not reported (IBNR) claims will be made.

b. Final determinations will not be made for less than 12 months of service during the contract year. Final determinations will be made when all dates of service during the contract year have 12 months of elapsed time from the last date of service. Final determinations will use data updated since the interim determination.

2. The determination will calculate the difference between the actual aggregate cost of authorized services and the aggregate per capita prepaid benchmark (PCPB).

3. The PCPB will be set on the basis of health status-based risk adjustment.

a. The health risk of the Medicaid enrollees enrolled in the CCN-S will be measured using a nationally recognized risk-assessment model.

b. Utilizing this information, the PCPBs will be adjusted to account for the health risk for the enrollees in each CCN-S relative to the overall population being measured.

c. The health risk of the enrollees and associated CCN-S risk scores and the PCPBs will be updated periodically to reflect changes in risk over time.

4. Costs of the following services will not be included in the determination of the PCPB. These services include, but are not limited to:

a. nursing facility;

b. dental services;

c. personal care services (children and adults);

d. hospice;

e. school-based individualized education plan services provided by a school district and billed through the intermediate school district;

f. specified Early Steps Program services;

g. specialized behavioral health services (e.g. provided by a psychiatrist, psychologist, social worker, psychiatric advanced nurse practitioner;

h. targeted case management;

i. non-emergency medical transportation;

j. intermediate care facilities for persons with intellectual disabilities;

k. home and community-based waiver services;

l. durable medical equipment and supplies; and

m. orthotics and prosthetics.

5. Individual member total cost for the determination year in excess of an amount specified in the contract will not be included in the determination of the PCPB, nor will it be included in actual cost at the point of determination so that outlier cost of certain individuals and/or services will not jeopardize the overall savings achieved by the CCN-S.

6. The CCN-S will be eligible to receive up to 60 percent of savings if the actual aggregate costs of authorized services, including enhanced primary care case management

fees advanced, are determined to be less than the aggregate PCPB (for the entire CCN-S enrollment).

a. Shared savings will be limited to five percent of the actual aggregate costs, including the enhanced primary care case management fees paid. Such amounts shall be determined in the aggregate and not for separate enrollment types.

b. The department may make an interim payment to the CCN for savings achieved based on the interim determination. Interim payments shall not exceed 75 percent of the eligible amount.

c. The department will make a final payment to the CCN for savings achieved based on the final determination. The final payment amount will be up to the difference between the amount of the interim payment (if any) and the final amount eligible for distribution.

d. For determination periods during the CCN-S first two years of operation, any distribution of CCN-S savings will be contingent upon the CCN meeting the established "early warning system" administrative performance measures and compliance under the contract. After the second year of operation, distribution of savings will be contingent upon the CCN-S meeting department established clinical quality performance measure benchmarks and compliance with the contract.

7. In the event the CCN-S exceeds the PCPB in the aggregate (for the entire CCN-S enrollment) as calculated in the final determination, the CCN-S will be required to refund up to 50 percent of the total amount of the enhanced primary care case management fees paid to the CCN-S during the period being determined.

C. - C.8. 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, LR 37:1581 (June 2011), amended LR 40:311 (February 2014), LR 41:

Chapter 35. Managed Care OrganizationParticipation Criteria

§3501. Participation Requirements

A. In order to participate in the Bayou Health Program, a managed care organization must be a successful bidder, be awarded a contract with the department, and complete the readiness review.

B. An MCO must:

1. …

2. meet the requirements of R.S. 22:2016 and be licensed or have a certificate of authority from the Louisiana Department of Insurance (DOI) pursuant to title 22 of the *Louisiana Revised Statues* at the time a proposal is submitted;

3. - 4. …

5. meet NCQA health plan accreditation or agree to submit an application for accreditation at the earliest possible date as allowed by NCQA and once achieved, maintains accreditation through the life of this agreement;

6. have a network capacity to enroll a minimum of 100,000 Medicaid and LaCHIP eligibles; and

7. not have an actual or perceived conflict of interest that, in the discretion of the department, would interfere or give the appearance of possibly interfering with its duties and obligations under this Rule, the contract and any and all appropriate guides. Conflict of interest shall include, but is not limited to, being the fiscal intermediary contractor for the department; and

8. establish and maintain a performance bond in the amount specified by the department and in accordance with the terms of the contract;

9. except for licensure and financial solvency requirements, no other provisions of title 22 of the *Revised Statutes* shall apply to an MCO participating in the Louisiana Medicaid Program. Neither the HIPAA assessment nor the fraud assessment levied by the Department of Insurance shall be payable by a Medicaid MCO.

C. An MCO shall ensure the provision of core benefits and services to Medicaid enrollees in a department designated geographic service area as specified in the terms of the contract.

D. Upon request by the Centers for Medicare and Medicaid Services, the Office of Inspector General, the Government Accounting Office, the department or its designee, an MCO shall make all of its records pertaining to its contract (services provided there under and payment for services) with the department available for review, evaluation and audit. The records shall include, but are not limited to the following:

1. - 4. …

E. An MCO shall maintain an automated management information system that collects, analyzes, integrates and reports data that complies with department and federal reporting requirements.

1. The MCO shall submit to the department for approval the MCO's emergency/contingency plan if the MCO is unable to provide the data reporting specified in the contract and department issued guides.

F. An MCO shall obtain insurance coverage(s) including, but not limited to, workman's compensation, commercial liability, errors and omissions, and reinsurance as specified in the terms of the contract. Subcontractors, if any, shall be covered under these policies or have insurance comparable to the MCO's required coverage.

G. An MCO shall provide all financial reporting as specified in the terms of the contract.

H. An MCO shall secure and maintain a performance and fidelity bond as specified in the terms of the contract during the life of the contract.

I. In the event of noncompliance with the contract and the department's guidelines, an MCO shall be subject to the sanctions specified in the terms of the contract including, but not limited to:

1. - 3. …

4. suspension and/or termination of the MCO's contract.

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 37:1583 (June 2011), amended LR 41:

§3503. Managed Care Organization Responsibilities

A. The MCO shall be responsible for the administration and management of its requirements and responsibilities under the contract with the department and any and all department issued guides. This includes all subcontracts, employees, agents and anyone acting for or on behalf of the MCO.

1. No subcontract or delegation of responsibility shall terminate the legal obligation of the MCO to the department to assure that all requirements are carried out.

B. An MCO shall possess the expertise and resources to ensure the delivery of core benefits and services to members and to assist in the coordination of covered services, as specified in the terms of the contract.

1. An MCO shall have written policies and procedures governing its operation as specified in the contract and department issued guides.

C. An MCO shall accept enrollees in the order in which they apply without restriction, up to the enrollment capacity limits set under the contract.

1. An MCO shall not discriminate against enrollees on the basis of race, gender, color, national origin, age, health status, sexual orientation, or need for health care services, and shall not use any policy or practice that has the effect of discriminating on any such basis.

D. An MCO shall be required to provide service authorization, referrals, coordination, and/or assistance in scheduling the covered services consistent with standards as defined in the Louisiana Medicaid State Plan and as specified in the terms of the contract.

E. An MCO shall provide a chronic care management program as specified in the contract.

F. The MCO shall establish and implement a quality assessment and performance improvement program as specified in the terms of the contract and department issued guides.

G. An MCO shall develop and maintain a utilization management program including policies and procedures with defined structures and processes as specified in the terms of the contract and department issued guides.

H. An MCO shall develop and maintain effective continuity of care activities which ensure a continuum of care approach to providing health care services to members.

I. The MCO must have administrative and management arrangements or procedures, including a mandatory compliance plan, that are designed to guard against fraud and abuse.

1. The MCO shall comply with all state and federal laws and regulations relating to fraud, abuse, and waste in the Medicaid and CHIP program as well all requirements set forth in the contract and department issued guides.

J. An MCO shall maintain a health information system that collects, analyzes, integrates and reports data as specified in the terms of the contract and all department issued guides.

1. An MCO shall collect data on enrollees and provider characteristics and on services furnished to members through an encounter data system as specified in the contract and all department issued guides.

K. An MCO shall be responsible for conducting routine provider monitoring to ensure:

1. - 2. …

L. An MCO shall ensure that payments are not made to a provider who is in non-payment status with the department or is excluded from participation in federal health care programs (i.e., Medicare, Medicaid, CHIP, etc.).

M. …

N. An MCO shall participate on the department's Medicaid Quality Committee to provide recommendations for the Bayou Health Program.

O. The MCO shall provide both member and provider services in accordance with the terms of the contract and department issued guides.

1. The MCO shall submit member handbooks, provider handbooks, and templates for the provider directory to the department for approval prior to distribution and subsequent to any material revisions.

a. The MCO must submit all proposed changes to the member handbooks and/or provider manuals to the department for review and approval in accordance with the terms of the contract and the department issued guides.

b. After approval has been received from the department, the MCO must provide a minimum of 30 days' notice to the members and/or providers of any proposed material changes to the plan through updates to the member handbooks and/or provider handbooks.

P. The member handbook shall include, but not be limited to:

1. a table of contents;

a. - b. Repealed.

2. a general description regarding:

a. how the MCO operates;

b. member rights and responsibilities;

c. appropriate utilization of services including emergency room visits for non-emergent conditions;

d. the PCP selection process; and

e. the PCP's role as coordinator of services;

3. member rights and protections as specified in 42 CFR §438.100 and the MCO's contract with the department including, but not limited to:

a. a member's right to disenroll from the MCO;

b. a member's right to change providers within the MCO;

c. any restrictions on the member's freedom of choice among MCO providers; and

d. a member's right to refuse to undergo any medical service, diagnoses, or treatment, or to accept any health service provided by the MCO if the member objects (or in the case of a child, if the parent or guardian objects) on religious grounds;

4. member responsibilities, appropriate and inappropriate behavior, and any other information deemed essential by the MCO or the department, including but not limited to:

a. immediately notifying the MCO if he or she has a Worker's Compensation claim, a pending personal injury or medical malpractice law suit, or has been involved in an auto accident;

b. reporting to the department if the member has or obtains another health insurance policy, including employer sponsored insurance; and

c. a statement that the member is responsible for protecting his/her identification card and that misuse of the card, including loaning, selling or giving it to others could result in loss of the member's Medicaid eligibility and/or legal action;

5. the amount, duration, and scope of benefits available under the MCO's contract with the department in sufficient detail to ensure that members have information needed to aid in understanding the benefits to which they are entitled including, but not limited to:

a. information about health education and promotion programs, including chronic care management;

b. the procedures for obtaining benefits, including prior authorization requirements and benefit limits;

c. how members may obtain benefits, including family planning services and specialized behavioral health services, from out-of-network providers;

d. how and where to access any benefits that are available under the Louisiana Medicaid state plan, but are not covered under the MCO's contract with the department;

e. information about early and periodic screening, diagnosis and treatment (EPSDT) services;

f. how transportation is provided, including how to obtain emergency and non-emergency medical transportation;

g. the post-stabilization care services rules set forth in 42 CFR 422.113(c);

h. the policy on referrals for specialty care, including behavioral health services and other benefits not furnished by the member's primary care provider;

i. for counseling or referral services that the MCO does not cover because of moral or religious objections, the MCO is required to furnish information on how or where to obtain the service;

j. how to make, change, and cancel medical appointments and the importance of canceling and/or rescheduling rather than being a "no show;"

k. the extent to which and how after-hour services are provided; and

l. information about the MCO's formulary and/or preferred drug list (PDL), including where the member can access the most current information regarding pharmacy benefits;

6. instructions to the member to call the Medicaid Customer Service Unit toll free telephone number or access the Medicaid member website to report changes in parish of residence, mailing address or family size changes;

7. a description of the MCO's member services and the toll-free telephone number, fax number, e-mail address and mailing address to contact the MCO's Member Services Unit;

8. instructions on how to request multi-lingual interpretation and translation services when needed at no cost to the member. This information shall be included in all versions of the handbook in English and Spanish; and

9. grievance, appeal, and state fair hearing procedures and time frames as described in 42 CFR §438.400 through §438.424 and the MCO's contract with the department.

Q. The provider manual shall include, but not be limited to:

1. billing guidelines;

2. medical management/utilization review guidelines;

a. - e. Repealed.

3. case management guidelines;

a. - d. Repealed.

4. claims processing guidelines and edits;

a. - c. Repealed.

5. grievance and appeals procedures and process; and

a. - l. Repealed.

6. other policies, procedures, guidelines, or manuals containing pertinent information related to operations and pre-processing claims.

7. - 9. Repealed.

R. The provider directory for members shall be developed in three formats:

1. a hard copy directory to be made available to members and potential members upon request;

2. an accurate electronic file refreshed weekly of the directory in a format to be specified by the department and used to populate a web-based online directory for members and the public; and

3. an accurate electronic file refreshed weekly of the directory for use by the enrollment broker.

4. - 6. Repealed.

S. The department shall require all MCOs to utilize the standard form designated by the department for the prior authorization of prescription drugs, in addition to any other currently accepted facsimile and electronic prior authorization forms.

1. An MCO may submit the prior authorization form electronically if it has the capabilities to submit the form in this manner.

S.2. - T.1. 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, LR 37:1583 (June 2011), amended LR 39:92 (January 2013), LR 40:66 (January 2014), LR 41:

§3505 Network Access Standards and Guidelines

A. The MCO must maintain and monitor a provider network that is supported by written agreements and is sufficient to provide adequate access of healthcare to enrollees as required by federal law and the terms as set forth in the contract. The MCO shall adhere to the federal regulations governing access standards as well as the specific requirements of the contract and all department issued guides.

B. The MCO must provide for service delivery out-of-network for any core benefit or service not available in network for which the MCO does not have an executed contract for the provision of such medically necessary services. Further, the MCO must arrange for payment so that the Medicaid enrollee is not billed for this service.

C. The MCO shall cover all medically necessary services to treat an emergency medical condition in the same amount, duration, and scope as stipulated in the Medicaid state plan.

1. - 3. …

D. The MCO must maintain a provider network and in-area referral providers in sufficient numbers, as determined by the department, to ensure that all of the required core benefits and services are available and accessible in a timely manner in accordance with the terms and conditions in the contract and department issued guide.

E. Any pharmacy or pharmacist participating in the Medicaid Program may participate as a network provider if licensed and in good standing with the Louisiana State Board of Pharmacy and accepts the terms and conditions of the contract offered to them by the MCO.

1. The MCO shall not require its members to use mail service pharmacy.

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 37:1585 (June 2011), amended LR 39:92 (January 2013), LR 41:

§3507. Benefits and Services

A. …

1. Core benefits and services shall be defined as those health care services and benefits required to be provided to Medicaid MCO members enrolled in the MCO as specified under the terms of the contract and department issued guides.

2. …

B. The MCO:

1. - 3.b. …

4. shall provide core benefits and services as outlined and defined in the contract and shall provide medically necessary and appropriate care to Medicaid MCO Program members;

5. …

a. the MCO may exceed the limits as specified in the minimum service requirements outlined in the contract;

5.b. - 7. …

C. If the MCO elects not to provide, reimburse for, or provide coverage of a counseling or referral service because of an objection on moral or religious grounds, the MCO must furnish information about the services it does not cover in accordance with §1932(b)(3)(B)(ii) of the Social Security Act and federal regulations by notifying:

1. …

2. the potential enrollees before and during enrollment in the MCO;

3. - 4. …

D. The following is a summary listing of the core benefits and services that an MCO is required to provide:

1. - 4. …

5. family planning services as specified in 42 CFR §431.51(b)(2) (not applicable to an MCO operating under a moral and religious objection as specified in the contract);

6. - 17. …

18. rehabilitation therapy services (physical, occupational, and speech therapies);

19. pharmacy services (outpatient prescription medicines dispensed with the exception of those prescribed by a specialized behavioral health provider, and at the contractual responsibility of another Medicaid managed care entity);

20. hospice services;

21. personal care services (age 0-20); and

22. pediatric day healthcare services.

NOTE: …

E. Transition Provisions

1. In the event a member transitions from an MCO included status to an MCO excluded status before being discharged from a hospital and/or rehabilitation facility, the cost of the entire admission will be the responsibility of the MCO. This is only one example and does not represent all situations in which the MCO is responsible for cost of services during a transition.

2. In the event a member is transitioning from one MCO to another and is hospitalized at 12:01 a.m. on the effective date of the transfer, the relinquishing MCO shall be responsible for the inpatient hospital charges through the date of discharge. Services other than inpatient hospital will be the financial responsibility of the receiving MCO.

F. - F.1. …

G. Excluded Services

1. The following services will continue to be reimbursed by the Medicaid Program on a fee-for-service basis. The MCO shall provide any appropriate referral that is medically necessary. The department shall have the right to incorporate these services at a later date if the member capitation rates have been adjusted to incorporate the cost of such service. Excluded services include:

a. - c. …

d. personal care services (age 21 and over);

e. nursing facility services;

f. individualized education plan services provided by a school district and billed through the intermediate school district, or school-based services funded with certified public expenditures;

g. specialized behavioral health services;

h. applied behavioral analysis therapy services; and

i. targeted case management services.

j. Repealed.

H. Utilization Management

1. The MCO shall develop and maintain policies and procedures with defined structures and processes for a utilization management (UM) program that incorporates utilization review. The program shall include service authorization and medical necessity review and comply with the requirements set forth in this Section, the contract and department issued guides.

a. The MCO-P shall submit UM policies and procedures to the department for written approval annually and subsequent to any revisions.

2. - 2.h. …

3. The UM Program's medical management and medical necessity review criteria and practice guidelines shall be reviewed annually and updated periodically as appropriate. The MCO shall use the medical necessity definition as set forth in LAC 50:I.1101 for medical necessity determinations.

a. - a.iv. …

b. The MCO must identify the source of the medical management criteria used for the review of medical necessity and for service authorization requests.

i. - iii. …

iv. The individuals who will make medical necessity determinations must be identified if the criteria are based on the medical training, qualifications, and experience of the MCO medical director or other qualified and trained professionals.

4. The MCO shall ensure that only licensed clinical professionals with appropriate clinical expertise in the treatment of a member's condition or disease shall determine service authorization request denials or authorize a service in an amount, duration or scope that is less than requested.

5. The MCO shall ensure that compensation to individuals or entities that conduct UM activities is not

structured to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary covered services to any member in accordance with 42 CFR §438.6(h), 42 CFR §422.208, and 42 CFR §422.210.

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 37:185 (June 2011), amended LR 39:92 (January 2013), LR 39:318 (February 2013), LR 41:

§3509. Reimbursement Methodology

A. Payments to an MCO. The department, or its fiscal intermediary, shall make monthly capitation payments to the MCO based on a per member, per month (PMPM) rate.

1. The department will establish monthly payment rates within an actuarially sound rate range certified by its actuaries. Consistent with all applicable federal rules and regulations, the rate range will initially be developed using fee-for-service claims data, Bayou Health shared savings claims experience, Bayou Health prepaid encounter data, financial data reported by Bayou Health plans, supplemental ad hoc data, and actuarial analyses with appropriate adjustments.

2. As the Bayou Health Program matures and fee-for-service data is no longer available, there will be increasing reliance on encounter data and/or financial data to set future rates, subject to comparable adjustments.

3. PMPM payments will be set on the basis of health status-based risk adjustments. An initial universal PMPM rate will be set for all MCOs at the beginning of each contract period and as deemed necessary by the department.

a. The health risk of the Medicaid enrollees enrolled in the MCO will be measured using a nationally-recognized risk-assessment model.

b. Utilizing this information, the universal PMPM rates will be adjusted to account for the health risk of the enrollees in each MCO relative to the overall population being measured.

c. The health risk of the members and associated MCO risk scores will be updated periodically to reflect changes in risk over time.

d. The department will provide the MCO with advance notice of any major revision to the risk-adjustment methodology.

4. An MCO shall be reimbursed a one-time supplemental lump sum payment, hereafter referred to as a "maternity kick payment," for each obstetrical delivery in the amount determined by the department's actuary.

a. The maternity kick payment is intended to cover the cost of prenatal care, the delivery event, and postpartum care. Payment will be paid to the MCO upon submission of satisfactory evidence of the occurrence of a delivery.

b. Only one maternity kick payment will be made per delivery event. Therefore, multiple births during the same delivery will still result in one maternity kick payment being made.

c. The maternity kick payment will be paid for both live and still births. A maternity kick payment will not be reimbursed for spontaneous or induced abortions.

d. Repealed.

5. …

6. - 6.a. Reserved.

7. A withhold of the aggregate capitation rate payment may be applied to provide an incentive for MCO compliance as specified in the contract.

B. As Medicaid is the payor of last resort, an MCO must agree to accept the PMPM rate as payment-in-full from the department and agree not to seek additional payment from a member for any unpaid cost.

C. The MCO rate does not include graduate medical education payments or disproportionate share hospital payments. These supplemental payments will be made to applicable providers outside the PMPM rate by the department according to methodology consistent with existing rules.

D. An MCO shall assume 100 percent liability for any expenditure above the PMPM rate.

E. The MCO shall meet all financial reporting requirements specified in the terms of the contract.

F. An MCO shall have a medical loss ratio (MLR) for each MLR reporting calendar year of not less than 85 percent using definitions for health care services, quality initiatives, and administrative cost as specified in 45 CFR Part 158.

1. An MCO shall provide an annual MLR report, in a format as determined by the department, by June 1 following the MLR reporting year that separately reports the MCO's medical loss ratio for services provided to Medicaid enrollees and payment received under the contract with the department from any other products the MCO may offer in the state of Louisiana.

2. If the medical loss ratio is less than 85 percent, the MCO will be subject to refund of the difference, within the timeframe specified, to the department by August 1. The portion of any refund due the department that has not been paid by August 1 will be subject to interest at the current Federal Reserve Board lending rate or in the amount of ten percent per annum, whichever is higher.

3. The department shall provide for an audit of the MCO's annual MLR report and make public the results within 60 calendar days of finalization of the audit.

G. …

H. The department may adjust the PMPM rate, during the term of the contract, based on:

1. changes to core benefits and services included in the capitation rate;

2. changes to Medicaid population groups eligible to enroll in an MCO;

3. changes in federal requirements; and/or

4. …

I. Any adjusted rates must continue to be actuarially sound and will require an amendment to the contract.

J. The MCO shall not assign its rights to receive the PMPM payment, or its obligation to pay, to any other entity.

1. At its option, the department may, at the request of the MCO, make payment to a third party administrator.

2. - 3.a. Reserved.

K. In the event that an incorrect payment is made to the MCO, all parties agree that reconciliation will occur.

1. …

L. Network Provider Reimbursement

1. Reimbursement for covered services shall be equal to or greater than the published Medicaid fee-for-service rate in effect on the date of service, unless mutually agreed by

both the plan and the provider in the provider contract to pay otherwise.

a. The MCO shall pay a pharmacy dispensing fee, as defined in the contract, at a rate no less than the minimum rate specified in the terms of the contract.

2. The MCO's subcontract with the network provider shall specify that the provider shall accept payment made by the MCO as payment-in-full for core benefits and services provided and shall not solicit or accept any surety or guarantee of payment from the department or the member.

a. …

3. The MCO shall not enter into alternative payment arrangements with federally qualified health centers (FQHCs) or rural health clinics (RHCs) as the MCO is required to reimburse these providers according to the published FQHC/RHC Medicaid prospective payment schedule rate in effect on the date of service, whichever is applicable.

a. Repealed.

M. Out-of-Network Provider Reimbursement

1. The MCO is not required to reimburse more than 90 percent of the published Medicaid fee-for-service rate in effect on the date of service to out-of-network providers to whom they have made at least three documented attempts to include the provider in their network as per the terms of the contract.

2. …

3. The MCO is not required to reimburse pharmacy services delivered by out-of-network providers. The MCO shall maintain a system that denies the claim at the point-of-sale for providers not contracted in the network.

N. Reimbursement for Emergency Services for In-Network or Out-of-Network Providers

1. The MCO is financially responsible for ambulance services, emergency and urgently needed services and maintenance, and post-stabilization care services in accordance with the provisions set forth in 42 CFR §422.113.

2. The reimbursement rate for medically necessary emergency services shall be no less than the published Medicaid fee-for-service rate in effect on the date of service, regardless of whether the provider that furnished the services has a contract with the MCO.

a. The MCO may not concurrently or retrospectively reduce a provider's reimbursement rate for these emergency services, including ancillary and diagnostic services, provided during an episode 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 37:1587 (June 2011), amended LR 39:92 (January 2013), LR 41:

§3511. Prompt Pay of Claims

A. Network Providers. All subcontracts executed by the MCO shall comply with the terms in the contract. Requirements shall include at a minimum:

1. …

2. the full disclosure of the method and amount of compensation or other consideration to be received from the MCO; and

3. the standards for the receipt and processing of claims are as specified by the department in the MCO's contract with the department and department issued guides.

B. Network and Out-of-Network Providers

1. The MCO shall make payments to its network providers, and out-of-network providers, subject to the conditions outlined in the contract and department issued guides.

a. The MCO shall pay 90 percent of all clean claims, as defined by the department, received from each provider type within 15 business days of the date of receipt.

b. The MCO shall pay 99 percent of all clean claims within 30 calendar days of the date of receipt.

c. The MCO shall pay annual interest to the provider, at a rate specified by the department, on all clean claims paid in excess of 30 days of the date of receipt. This interest payment shall be paid at the time the claim is fully adjudicated for payment.

2. The provider must submit all claims for payment no later than 180 days from the date of service.

3. The MCO and all providers shall retain any and all supporting financial information and documents that are adequate to ensure that payment is made in accordance with applicable federal and state laws.

3.a. - 4. …

C. Claims Management

1. The MCO shall process a provider's claims for covered services provided to members in compliance with all applicable state and federal laws, rules and regulations as well as all applicable MCO policies and procedures including, but not limited to:

a. - f. …

D. Provider Claims Dispute

1. The MCO shall:

a. - d. …

E. Claims Payment Accuracy Report

1. The MCO shall submit an audited claims payment accuracy percentage report to the department on a monthly basis as specified in the contract and department issued MCO guides.

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 37:1589 (June 2011), amended LR 41:

Chapter 37. Grievance and Appeal Process

Subchapter A. Member Grievances and Appeals

§3701. Introduction

A. An MCO must have a grievance system for Medicaid enrollees that complies with federal regulations. The MCO shall establish and maintain a procedure for the receipt and prompt internal resolution of all grievances and appeals in accordance with all applicable state and federal laws and as specified in the contract and all department issued guides.

1. - 3. Repealed.

B. The MCO's grievance and appeals procedures, and any changes thereto, must be approved in writing by the department prior to their implementation and must include, at a minimum, the requirements set forth herein.

1. The MCO shall refer all members who are dissatisfied, in any respect, with the MCO or its subcontractor to the MCO's designee who is authorized to review and respond to grievances and to require corrective action.

2. The member must exhaust the MCO's internal grievance/appeal process prior to accessing the state fair hearing process.

C. The MCO shall not create barriers to timely due process. If the number of appeals reversed by the state fair hearing process exceeds 10 percent of appeals received within a 12 month period, the MCO may be subject to sanctions.

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 37:1589 (June 2011), amended LR 41:

§3703. Definitions

Action—the denial or limited authorization of a requested service, including:

1. the type or level of service;

2. reduction, suspension, or termination of a previously authorized service;

3. denial, in whole or in part, of payment for a service for any reason other than administrative denial;

4. failure to provide services in a timely manner as specified in the contract; or

5. failure of the MCO to act within the timeframes provided in this Subchapter.

* * *

Grievance—an expression of dissatisfaction about any matter other than an action as that term is defined in this Section. The term is also used to refer to the overall system that includes MCO level grievances and access to a fair hearing. Possible subjects for *grievances* include, but are not limited to:

1. the quality of care or services provided;

2. aspects of interpersonal relationships, such as rudeness of a provider or employee; or

3. failure to respect the member's rights.

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 37:1589 (June 2011), amended LR 41:

§3705. General Provisions

A. The MCO must have a system in place for members that include a grievance process, an appeal process, and access to the state fair hearing process once the MCO's appeal process has been exhausted.

B. Filing Requirements

1. Authority to File. A member, or a representative of his/her choice, may file a grievance and an MCO level appeal. Once the MCO's appeals process has been exhausted, a member or his/her representative may request a state fair hearing.

a. An MCO's provider, acting on behalf of the member and with his/her written consent, may file a grievance, appeal, or request a state fair hearing on behalf of a member.

2. Filing Timeframes. The member, or a representative or provider acting on the member's behalf and with his/her written consent, may file an appeal within 30 calendar days from the date on the MCO's notice of action.

a. - b. Repealed.

3. Filing Procedures

a. The member may file a grievance either orally or in writing with the MCO.

b. The member, or a representative or provider acting on the member's behalf and with the member's written consent, may file an appeal either orally or in writing.

C. Grievance Notice and Appeal Procedures

1. The MCO shall ensure that all members are informed of the state fair hearing process and of the MCO's grievance procedures.

a. The MCO shall provide a member handbook to each member that shall include descriptions of the MCO's grievance procedures.

b. Forms to file grievances, appeals, concerns, or recommendations to the MCO shall be available through the MCO, and must be provided to the member upon request. The MCO shall make all forms easily available on its website.

D. Grievance and Appeal Records

1. The MCO must maintain records of grievances and appeals. A copy of the grievance logs and records of the disposition of appeals shall be retained for six years. If any litigation, claim negotiation, audit, or other action involving the documents or records has been started before the expiration of the six year period, the records shall be retained until completion of the action and resolution of issues which arise from it or until the end of the regular six-year period, whichever is later.

E. Grievance Reports

1. The MCO shall provide an electronic report of the grievances and appeals it has received on a monthly basis in accordance with the requirements specified by the department, which will include, but is not limited to:

a. …

b. summary of grievances and appeals;

c. - f. …

F. All state fair hearing requests shall be sent directly to the state designated entity.

G. The MCO will be responsible for promptly forwarding any adverse decisions to the department for further review and/or action upon request by the department or the MCO member.

H. The department may submit recommendations to the MCO regarding the merits or suggested resolution of any grievance or appeal.

1. Repealed.

I. Information to Providers and Subcontractors. The MCO must provide the information about the grievance system as specified in federal regulations to all providers and subcontractors at the time they enter into a contract.

1. Repealed.

J. Recordkeeping and Reporting Requirements. Reports of grievances and resolutions shall be submitted to the department as specified in the contract. The MCO shall not modify the grievance system without the prior written approval of the department.

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 37:1590 (June 2011), amended LR 41:

§3707. Handling of Member Grievances and Appeals

A. In handling grievances and appeals, the MCO must meet the following requirements:

1. give members any reasonable assistance in completing forms and taking other procedural steps. This includes, but is not limited to, providing interpreter services and toll-free telephone numbers that have adequate TTY/TTD and interpreter capability;

2. acknowledge receipt of each grievance and appeal;

3. ensure that the individuals who make decisions on grievances and appeals are individuals who:

a. were not involved in any previous level of review or decision-making; and

b. if deciding on any of the following issues, are health care professionals who have the appropriate clinical expertise, as determined by the department, in treating the member's condition or disease:

i. an appeal of a denial that is based on lack of medical necessity;

ii. a grievance regarding denial of expedited resolution of an appeal; or

iii. a grievance or appeal that involves clinical issues.

B. Special Requirements for Appeals

1. The process for appeals must:

a. provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal);

b. provide the member a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The MCO must inform the member of the limited time available for this in the case of expedited resolution;

c. provide the member and his/her representative an opportunity, before and during the appeals process, to examine the member's case file, including medical records and any other documents and records considered during the appeals process; and

d. include, as parties to the appeal:

i. the member and his/her representative; or

ii. the legal representative of a deceased member's estate.

2. The MCO's staff shall be educated concerning the importance of the grievance and appeal procedures and the rights of the member and providers.

3. The appropriate individual or body within the MCO having decision making authority as part of the grievance and appeal procedures shall be identified.

4. Failure to Make a Timely Decision

a. Appeals shall be resolved no later than the stated time frames and all parties shall be informed of the MCO's decision.

b. If a determination is not made by the above time frames, the member's request will be deemed to have been approved as of the date upon which a final determination should have been made.

5. The MCO shall inform the member that he/she may seek a state fair hearing if the member is not satisfied with the MCO's decision in response to an appeal.

C. - G.3. 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, LR 37:1590 (June 2011), amended LR 41:

§3709. Notice of Action

A. Language and Format Requirements. The notice must be in writing and must meet the language and format requirements of federal regulations in order to ensure ease of understanding. Notices must also comply with the standards set by the department relative to language, content, and format.

1. - 2. Repealed.

B. Content of Notice. The notice must explain the following:

1. the action the MCO or its subcontractor has taken or intends to take;

2. …

3. the member's right to file an appeal with the MCO;

4. the member's right to request a state fair hearing after the MCO's appeal process has been exhausted;

5. the procedures for exercising the rights specified in this Section;

6. the circumstances under which expedited resolution is available and the procedure to request it; and

7. the member's right to have previously authorized services continue pending resolution of the appeal, the procedure to make such a request, and the circumstances under which the member may be required to pay the costs of these services.

C. Notice Timeframes. The MCO must mail the notice within the following timeframes:

1. for termination, suspension, or reduction of previously authorized Medicaid-covered services, at least 10 days before the date of action, except as permitted under federal regulations;

2. for denial of payment, at the time of any action taken that affects the claim; or

a. - b. Repealed.

3. for standard service authorization decisions that deny or limit services, as expeditiously as the member's health condition requires and within 14 calendar days following receipt of the request for service. A possible extension of up to 14 additional calendar days may be granted under the following circumstances:

a. the member, or his/her representative or a provider acting on the member's behalf, requests an extension; or

b. the MCO justifies (to the department upon request) that there is a need for additional information and that the extension is in the member's interest.

D. If the MCO extends the timeframe in accordance with this Section, it must:

1. - 3. …

E. For service authorization decisions not reached within the timeframes specified in this Section, this constitutes a denial and is thus an adverse action on the date that the timeframes expire.

1. - 2. Repealed.

F. For expedited service authorization decisions where a provider indicates, or the MCO determines, that following the standard timeframe could seriously jeopardize the member's life, health, or ability to attain, maintain, or regain

maximum function, the MCO must make an expedited authorization decision.

1. A notice must be furnished as expeditiously as the member's health condition requires, but no later than 72 hours or as expeditiously as the member's health requires, after receipt of the request for service.

2. The MCO may extend the 72 hour time period by up to 14 calendar days if the member or provider acting on behalf of the member requests an extension, or if the MCO justifies (to the department upon request) that there is a need for additional information and that the extension is in the member's interest.

G. The department shall conduct random reviews to ensure that members are receiving such notices in a timely manner.

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 37:1591 (June 2011), amended LR 41:

§3711. Resolution and Notification

A. The MCO must dispose of a grievance, resolve each appeal, and provide notice as expeditiously as the member's health condition requires, within the timeframes established in this Section.

1. - 2. Repealed.

B. Specific Timeframes

1. For standard disposition of a grievance and notice to the affected parties, the timeframe is established as 90 days from the day the MCO receives the grievance.

2. For standard resolution of an appeal and notice to the affected parties, the timeframe is established as 30 calendar days from the day the MCO receives the appeal.

3. For expedited resolution of an appeal and notice to affected parties, the timeframe is established as 72 hours or as expeditiously as the member's health requires after the MCO receives the appeal.

C. Extension of Timeframes

1. The MCO may extend the timeframes by up to 14 calendar days under the following circumstances:

a. the member requests the extension; or

b. the MCO shows to the satisfaction of the department, upon its request, that there is need for additional information and that the delay is in the member's interest.

D. If the MCO extends the timeframes for any extension not requested by the member, it must give the member written notice of the reason for the delay.

E. Format of Notice

1. The MCO shall follow the method specified in the department issued guide to notify a member of the disposition of a grievance.

2. For all appeals, the MCO must provide written notice of disposition.

3. For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice.

F. Content of Notice of Appeal Resolution. The written notice of the resolution must include, at a minimum, the following information:

1. the results of the resolution process and the date it was completed;

2. for appeals not resolved wholly in favor of the members:

a. the right to request a state fair hearing and the procedure to make the request;

b. the right to request to receive previously authorized services during the hearing process and the procedure to make such a request; and

c. that the member may be held liable for the cost of those services if the hearing decision upholds the MCO's action.

G. Requirements for State Fair Hearings

1. The department shall comply with the federal regulations governing fair hearings. The MCO shall comply with all of the requirements as outlined in the contract and department issued guides.

2. If the member has exhausted the MCO level appeal procedures, the member may request a state fair hearing within 30 days from the date of the MCO's notice of appeal resolution.

3. The parties to the state fair hearing include the MCO as well as the member and his/her representative or the representative of a deceased member's estate.

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 37:1591 (June 2011), amended LR 41:

§3713. Expedited Resolution of Appeals

A. The MCO must establish and maintain an expedited review process for appeals when the MCO determines (either from a member's request or indication from the provider making the request on the member's behalf or in support of the member's request) that taking the time for a standard resolution could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function.

1. Repealed.

B. If the MCO denies a request for expedited resolution of an appeal, it must:

1. transfer the appeal to the timeframe for standard resolution in accordance with the provisions of this Subchapter; and

2. make reasonable efforts to give the member prompt oral notice of the denial, and follow up within two calendar days with a written notice.

C. This decision (i.e., the denial of a request for expedited resolution of an appeal) does not constitute an action or require a notice of action. The member may file a grievance in response to this decision.

D. Failure to Make a Timely Decision. Appeals shall be resolved no later than the established timeframes and all parties shall be informed of the MCO's decision. If a determination is not made by the established timeframes, the member's request will be deemed to have been approved as of the date upon which a final determination should have been made.

E. The MCO is required to follow all standard appeal requirements for expedited requests except where differences are specifically noted in the requirements for expedited resolution.

1. The member or provider may file an expedited appeal either orally or in writing. No additional follow-up may be required.

2. The MCO shall inform the member of the limited time available for the member to present evidence and allegations of fact or law, in person and in writing, in the case of expedited resolution.

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 37:1592 (June 2011), amended LR 41:

§3715. Continuation of Services during the Pending MCO Appeal or State Fair Hearing

A. *Timely Filing*—filing on or before the later of the following, but no greater than 30 days:

1. within 10 calendar days of the MCO's mailing of the notice of action; or

2. the intended effective date of the MCO's proposed action.

B. Continuation of Benefits. The MCO must continue the member's benefits if the:

1. member or the provider, with the member's written consent, files the appeal timely;

2. appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

3. services were ordered by an authorized provider;

4. original period covered by the original authorization has not expired; and

5. member requests continuation of benefits.

C. Duration of Continued or Reinstated Benefits

1. If, at the member's request, the MCO continues or reinstates the member's benefits while the appeal is pending, the benefits must be continued until one of following occurs:

a. the member withdraws the appeal;

b. 10 calendar days pass after the MCO mails the notice providing the resolution of the appeal against the member, unless the member has requested a state fair hearing with continuation of benefits, within the 10-day timeframe, until a state fair hearing decision is reached;

c. a state fair hearing entity issues a hearing decision adverse to the member; or

d. the time period or service limits of a previously authorized service has been met.

D. Member Liability for Services. If the final resolution of the appeal is adverse to the member, the MCO may recover from the member the cost of the services furnished to the member while the appeal is pending, to the extent that they were furnished solely because of the requirements of this Section, and in accordance with federal regulations.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

§3717. Effectuation of Reversed Appeal Resolutions

A. Provision of Services during the Appeal Process

1. If the MCO or the state fair hearing entity reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCO must authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

B. If the MCO or the state fair hearing entity reverses a decision to deny authorization of services, and the member received the disputed services while the appeal was pending, the MCO must pay for those services in accordance with the contract.

C. At the discretion of the secretary, the department may overrule a decision made by the Division of Administration, Division of Administrative Law (the state fair hearing 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, Bureau of Health Services Financing, LR 41:

Subchapter B. Provider Grievance and Appeal Process

§3721. General Provisions

A. If the provider is filing a grievance or appeal on behalf of the member, the provider shall adhere to the provisions outlined in Subchapter A of this Chapter.

B. The MCO must have a grievance and appeals process for claims, medical necessity, and contract disputes for providers in accordance with the contract and department issued guides.

1. The MCO shall establish and maintain a procedure for the receipt and prompt internal resolution of all provider initiated grievances and appeals as specified in the contract and all department issued guides.

2. The MCO's grievance and appeals procedures, and any changes thereto, must be approved in writing by the department prior to their implementation.

3. Notwithstanding any MCO or department grievance and appeal process, nothing contained in any document, including, but not limited to Rule or contract, shall preclude an MCO provider's right to pursue relief through a court of appropriate jurisdiction.

4. The MCO shall report on a monthly basis all grievance and appeals filed and resolutions in accordance with the terms of the contract and department issued guide.

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, Bureau of Health Services Financing, LR 37:1592 (June 2011), amended LR 41:

§3723. Definitions

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, LR 37:1592 (June 2011), repealed LR 41:

§3725. General Provisions

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, LR 37:1592 (June 2011), repealed LR 41:

§3727. Handling of Enrollee Grievances and Appeals

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, LR 37:1593 (June 2011), repealed LR 41:

§3729. Notice of Action

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, LR 37:1593 (June 2011), repealed LR 41:

§3731. Resolution and Notification

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, LR 37:1594 (June 2011), repealed LR 41:

§3733. Expedited Resolution of Appeals

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, LR 37:1595 (June 2011), repealed LR 41:

§3735. Continuation of Services during the Pending CCN-P Appeal or State Fair Hearing

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, LR 37:1595 (June 2011), repealed LR 41:

§3737. Effectuation of Reversed Appeal Resolutions

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, LR 37:1595 (June 2011), repealed LR 41:

Subchapter C. Grievance and Appeals Procedures for Providers

§3743. General Provisions

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, LR 37:1595 (June 2011), repealed LR 41:

Chapter 39. Sanctions and Measures to Obtain Compliance

§3901. General Provisions

A. The MCO agrees to be subject to intermediate sanctions and other measures to obtain compliance with the terms and conditions of the contract.

1. The specific grounds for intermediate sanctions and other measures to obtain compliance shall be set forth within the contract.

a. - b. Repealed.

2. The determination of noncompliance is at the sole discretion of the department.

3. It shall be at the department's sole discretion as to the proper recourse to obtain compliance.

B. Intermediate Sanctions

1. The department may impose intermediate sanctions on the MCO if the department finds that the MCO acts or fails to act as specified in 42 CFR §438.700 et seq., or if the department finds any other actions/occurrences of misconduct subject to intermediate sanctions as specified in the contract.

2. The types of intermediate sanctions that the department may impose shall be in accordance with §1932 of the Social Security Act (42 U.S.C. §1396u-2) and 42 CFR §438.700 et seq.

3. The department will provide the MCO with due process in accordance with 42 CFR 438.700 et seq., including timely written notice of sanction and pre-termination hearing.

4. The department will give the CMS Regional Office written notice whenever it imposes or lifts a sanction for one of the violations listed in 42 CFR §438.700 et seq., specifying the affected MCO, the kind of sanction, and the reason for the department's decision to lift a sanction.

C. Other Measures. In addition to intermediate sanctions, the department may impose other measures to obtain MCO compliance with the terms and conditions of the contract, including but not limited to administrative actions, corrective action plans, and/or monetary penalties as specified in the contract.

1. Administrative actions exclude monetary penalties, corrective action plans, intermediate sanctions, and termination, and include but are not limited to a warning through written notice or consultation and education regarding program policies and procedures.

2. The MCO may be required to submit a corrective action plan (CAP) to the department within the timeframe specified by the department. The CAP, which is subject to approval or disapproval by the department, shall include:

a. steps to be taken by the MCO to obtain compliance with the terms of the contract;

b. a timeframe for anticipated compliance; and

c. a date for the correction of the occurrence identified by the department.

3. The department, as specified in the contract, has the right to enforce monetary penalties against the MCO for certain conduct, including but not limited to failure to meet the terms of a CAP.

4. Monetary penalties will continue until satisfactory correction of an occurrence of noncompliance has been made as determined by the department.

D. Any and all monies collected as a result of monetary penalties or intermediate sanctions against an MCO or any of its subcontractors, or any recoupment(s)/repayment(s) received from the MCO or any of its subcontractors, shall be placed into the Louisiana Medical Assistance Trust Fund established by R.S. 46:2623.

E. Termination for Cause

1. Issuance of Notice Termination

a. The department may terminate the contract with an MCO when it determines the MCO has failed to perform, or violates, substantive terms of the contract or fails to meet applicable requirements in §§1903(m), 1905(t) or 1932 of the Social Security Act in accordance with the provisions of the contract.

b. The department will provide the MCO with a timely written Notice of Intent to Terminate notice. In accordance with federal regulations, the notice will state:

i. the nature and basis of the sanction;

ii. pre-termination hearing and dispute resolution conference rights, if applicable; and

iii. the time and place of the hearing.

c. The termination will be effective no less than 30 calendar days from the date of the notice.

d. The MCO may, at the discretion of the department, be allowed to correct the deficiencies within 30 calendar days of the date that the notice was issued, unless other provisions in this Section demand otherwise, prior to the issue of a notice of termination.

F. Termination due to Serious Threat to Health of Members

1. The department may terminate the contract immediately if it is determined that actions by the MCO or its subcontractor(s) pose a serious threat to the health of members enrolled in the MCO.

2. The MCO members will be enrolled in another MCO.

G. Termination for Insolvency, Bankruptcy, Instability of Funds. The MCO's insolvency or the filing of a bankruptcy petition by or against the MCO shall constitute grounds for termination for cause.

1. Repealed.

H. Termination for Ownership Violations

1. The MCO is subject to termination unless the MCO can demonstrate changes of ownership or control when a person with a direct or indirect ownership interest in the MCO (as defined in the contract and PE-50) has:

a. been convicted of a criminal offense as cited in §1128(a), (b)(1) or (b)(3) of the Social Security Act, in accordance with federal regulations;

b. had civil monetary penalties or assessment imposed under §1128(A) of the Social Security Act; or

c. been excluded from participation in Medicare or any state health care program.

I. MCO Requirements Prior to Termination for Cause. The MCO shall comply with all of the terms and conditions stipulated in the contract and department issued guides during the period prior to the effective date of termination. The MCO is required to meet the requirements as specified in the contract if terminated for cause.

1. - 2.t. Repealed.

J. Termination for Failure to Accept Revised Monthly Capitation Rate. Should the MCO refuse to accept a revised monthly capitation rate as provided in the contract, the MCO may provide written notice to the department requesting that the contract be terminated effective at least 60 calendar days from the date the department receives the written request. The department shall have sole discretion to approve or deny the request for termination, and to impose such conditions on the granting of an approval as it may deem appropriate, but it shall not unreasonably withhold its approval.

1. Repealed.

K. - Q. 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, LR 37:1596 (June 2011), amended LR 41:

Chapter 40. Audit Requirements

§4001. General Provisions

A. The MCO and its subcontractors shall comply with all audit requirements specified in the contract and department issued guides.

B. The MCO and its subcontractors shall maintain supporting financial information and documents that are adequate to ensure that payment is made in accordance with applicable federal and state requirements, and are sufficient to ensure the accuracy and validity of claims.

1. Such documents, including all original claim forms, shall be maintained and retained by the MCO and or its subcontractors for a period of six years after the contract expiration date or until the resolution of all litigation, claim, financial management review, or audit pertaining to the contract, whichever is longer.

2. The MCO or its subcontractors shall provide any assistance that such auditors and inspectors reasonably may require to complete with such audits or inspections.

C. …

D. Upon reasonable notice, the MCO and its subcontractors shall provide the officials and entities identified in the contract and department issued guides with prompt, reasonable, and adequate access to any records, books, documents, and papers that are related to the performance of the contract.

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 37:1597 (June 2011), amended LR 41:

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

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 may have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by providing families with better coordination of their health care services and increasing the quality and continuity of care for the individual and the entire family.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by reducing the financial burden on families through better coordinated health care services and increased continuity of care.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Managed Care for Physical and Basic Behavioral Health

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 a reduction in the rate of expenditure growth in the Medicaid program. The rule is estimated to reduce future state general fund required for the program by $20,370,111 for FY 14-15, $49,591,620 for FY 15-16 and $57,403,189 for FY 16-17. It is anticipated that $6,724 ($3,362 SGF and $3,362 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that implementation of this proposed rule will result in a reduction in rate of expenditure growth in the Medicaid program. The rule is estimated to reduce future federal revenue collections by approximately $33,322,357 for FY 14-15, $81,951,139 for FY 15-16 and $95,224,274 for FY 16-17. It is anticipated that $3,362 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states. In addition, the implementation of this proposed rule is anticipated to increase premium tax revenues to the State as a result of the addition of new populations to the full-risk Managed Care Organization (MCO) model.

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

This proposed Rule amends the provisions governing coordinated care networks in order to change the program name, include provisions for enrollment of Shared Savings plan members in full-risk MCOs, voluntary enrollment of Home and Community-Based Waiver recipients and Chisholm class members and mixed service protocol for behavioral health, and incorporate other programmatic changes. It is anticipated that implementation of this proposed rule will result in a reduction in rate of expenditure growth in the Medicaid program. The rule is estimated to decrease future program expenditures in the Medicaid Program by approximately $53,699,192 for FY 14-15, $131,542,759 for FY 15-16 and $152,627,463 for FY 16-17.

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
1410#086

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Nursing Facilities
Leave of Absence Days
Reimbursement Reduction
(LAC 50:II.20021)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:II.20021 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing reimbursement to nursing facilities to reduce the reimbursement paid to nursing facilities for leave of absence days (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to further reduce the reimbursement rates for leave of absence days (*Louisiana Register*, Volume 39, Number 7). This proposed Rule is being promulgated to continue the provisions of the July 1, 2013 Emergency Rule.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement
Chapter 200. Reimbursement Methodology
§20021. Leave of Absence Days
[Formerly LAC 50:VII.1321]

A. - E. ...

F. Effective for dates of service on or after July 1, 2013, the reimbursement paid for leave of absence days shall be 10 percent of the applicable per diem rate in addition to the provider fee amount.

1. The provider fee amount shall be excluded from the calculations when determining the leave of absence days payment amount.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 41:

Family Impact Statement

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

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may increase the total direct and indirect cost of the provider to provide the same level of service due to the decrease in payments. The proposed Rule may also have a negative impact on the provider's ability to provide the same level of service as described in HCR 170 if the reduction in payments adversely impacts the provider's financial standing.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities—Leave of Absence Days—Reimbursement Reduction

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 general fund programmatic savings of $992,926 for FY 14-15, $1,016,411 for FY 15-16 and $1,044,405 for FY 16-17. It is anticipated that $328 ($164 SGF and $164 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed Rule and the Final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed Rule will decrease federal revenue collections by approximately $1,624,273 for FY 14-15, $1,679,641 for FY 15-16 and $1,732,529 for FY 16-17. It is anticipated that $164 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the Final Rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the July 1, 2013 Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to reduce the reimbursement rates paid for leave of absence days. It is anticipated that implementation of this proposed rule will reduce program expenditures for nursing facility services by approximately $2,617,527 for FY 14-15, $2,696,052 for FY 15-16 and $2,776,934 for FY 16-17.

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. However, we anticipate that the implementation may have a negative effect on employment as it will reduce the payments made to nursing facilities. The reduction in payments may adversely impact the financial standing of these providers and could possibly cause a reduction in employment opportunities.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1410#075	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Bureau of Health Services Financing

Pediatric Day Health Care Program
(LAC 48:I.Chapters 52 and 125 and LAC 50:XV.27503)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.5237, §5247, §5257, §12501-12503, adopt §12508, and amend LAC 50:XV.27503 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.

In compliance with Act 432 of the 2004 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing the licensing standards for pediatric day health care facilities (*Louisiana Register*, Volume 35, Number 12). The department subsequently adopted provisions to implement pediatric day health care (PDHC) services as an optional covered service under the Medicaid state plan (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the licensing standards for PDHC facilities to

revise the provisions governing provider participation, development and educational services and transportation requirements, and to adopt provisions for the inclusion of PDHC facilities in the Facility Need Review (FNR) Program. This Emergency Rule also amended the provisions governing pediatric day health care services in order to revise the recipient criteria which will better align the program's operational procedures with the approved Medicaid state plan provisions governing these services (*Louisiana Register*, Volume 40, Number 3).

The department promulgated an Emergency Rule which amended the March 1, 2014 Emergency Rule in order to revise the additional grandfather provisions for the facility need review process for the Pediatric Day Health Care Program (*Louisiana Register*, Volume 40, Number 4). This proposed Rule is being promulgated to continue the provisions of the April 20, 2014 Emergency Rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 52. Pediatric Day Health Care Facilities

Subchapter D. Participation Requirements

§5237. Acceptance Criteria

A. - D.1. …

2. The medical director of the PDHC facility may provide the referral to the facility only if he/she is the child's prescribing physician, and only if the medical director has no ownership interest in the PDHC facility.

3. No member of the board of directors of the PDHC facility may provide a referral to the PDHC. No member of the board of directors of the PDHC facility may sign a prescription as the prescribing physician for a child to participate in the PDHC facility services.

4. No physician with ownership interest in the PDHC may provide a referral to the PDHC. No physician with ownership interest in the PDHC may sign a prescription as the prescribing physician for a child to participate in the PDHC facility services.

5. Notwithstanding anything to the contrary, providers are expected to comply with all applicable federal and state rules and regulations including those regarding anti-referral and the Stark Law.

E. - G.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193 – 40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2769 (December 2009), amended LR 41:

Subchapter E. Pediatric Day Health Care Services

§5247. Developmental and Educational Services

A. …

B. For any child enrolled in the early intervention program (EarlySteps) or the local school district's program under the Individuals with Disabilities Act, the PDHC facility shall adhere to the following.

1. …

2. The PDHC facility shall not duplicate services already provided through the early intervention program or the local school district. EarlySteps services cannot be provided in the PDHC unless specifically approved in writing by the DHH EarlySteps Program. Medicaid waiver services cannot be provided in the PDHC unless specifically approved in writing by the Medicaid waiver program. The PDHC shall maintain a copy of such written approval in the child's medical record.

B.3. - D.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2770 (December 2009), amended LR 41:

§5257. Transportation

A. The PDHC facility shall provide or arrange transportation of children to and from the facility; however, no child, regardless of his/her region of origin, may be in transport for more than one hour on any single trip. The PDHC facility is responsible for the safety of the children during transport. The family may choose to provide their own transportation.

1. - 1.b. Repealed.

B. Whether transportation is provided by the facility on a daily basis or as needed, the general regulations under this Section shall apply.

C. If the PDHC facility provides transportation for children, the PDHC facility shall maintain in force at all times current commercial liability insurance for the operation of PDHC facility vehicles, including medical coverage for children in the event of accident or injury.

1. This policy shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment.

2. The PDHC facility shall maintain documentation that consists of the insurance policy or current binder that includes the name of the PDHC facility, the name of the insurance company, policy number, and period of coverage and explanation of coverage.

3. DHH Health Standards shall specifically be identified as the certificate holder on the policy and any certificate of insurance issued as proof of insurance by the insurer or producer (agent). The policy must have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

D. If the PDHC facility arranges transportation for children through a transportation agency, the facility shall maintain a written contract which is signed by a facility representation and a representative of the transportation agency. The contract shall outline the circumstances under which transportation will be provided.

1. The written contract shall be dated and time limited and shall conform to these licensing regulations.

2. The transportation agency shall maintain in force at all times current commercial liability insurance for the operation of transportation vehicles, including medical coverage for children in the event of accident or injury. Documentation of the insurance shall consist of the:

a. insurance policy or current binder that includes the name of the transportation agency;

b. name of the insurance agency;

c. policy number;

d. period of coverage; and

e. explanation of coverage.

3. DHH Health Standards shall specifically be identified as the certificate holder on the policy and any certificate of insurance issued as proof of insurance by the

insurer or producer (agent). The policy must have a cancellation/change statement requiring notification of the certificate holder 30 days prior to any cancellation or change of coverage.

4. - 10. Repealed

E. Transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency shall meet the following requirements.

1. Transportation agreements shall conform to state laws, including laws governing the use of seat belts and child restraints. Vehicles shall be accessible for people with disabilities or so equipped to meet the needs of the children served by the PDHC facility.

2. The driver or attendant shall not leave the child unattended in the vehicle at any time.

2.a. - 6. Repealed.

F. Vehicle and Driver Requirements

1. The requirements of Subsection F of this Section shall apply to all transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency.

2. The vehicle shall be maintained in good repair with evidence of an annual safety inspection.

3. The following actions shall be prohibited in any vehicle while transporting children:

a. the use of tobacco in any form;

b. the use of alcohol;

c. the possession of illegal substances; and

d. the possession of firearms, pellet guns, or BB guns (whether loaded or unloaded).

4. The number of persons in a vehicle used to transport children shall not exceed the manufacturer's recommended capacity.

5. The facility shall maintain a copy of a valid appropriate Louisiana driver's license for all individuals who drive vehicles used to transport children on behalf of the PDHC facility. At a minimum, a class "D" chauffeur's license is required for all drivers who transport children on behalf of the PDHC facility.

6. Each transportation vehicle shall have evidence of a current safety inspection.

7. There shall be first aid supplies in each facility or contracted vehicle. This shall include oxygen, pulse oximeter, and suction equipment. Additionally, this shall include airway management equipment and supplies required to meet the needs of the children being transported.

8. Each driver or attendant shall be provided with a current master transportation list including:

a. each child's name;

b. pick up and drop off locations; and

c. authorized persons to whom the child may be released.

i. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

9. The driver or attendant shall maintain an attendance record for each trip. The record shall include:

a. the driver's name;

b. the date of the trip;

c. names of all passengers (children and adults) in the vehicle; and

d. the name of the person to whom the child was released and the time of release.

10. There shall be information in each vehicle identifying the name of the administrator and the name, telephone number, and address of the facility for emergency situations.

G. Child Safety Provisions

1. The requirements of Subsection G of this Section shall apply to all transportation arrangements, whether provided by the PDHC facility directly or arranged by the PDHC facility through a written contract with a transportation agency.

2. The driver and one appropriately trained staff member shall be required at all times in each vehicle when transporting any child. Staff shall be appropriately trained on the needs of each child, and shall be capable and responsible for administering interventions when appropriate.

3. Each child shall be safely and properly:

a. assisted into the vehicle;

b. restrained in the vehicle;

c. transported in the vehicle; and

d. assisted out of the vehicle.

4. Only one child shall be restrained in a single safety belt or secured in any American Academy of Pediatrics recommended age appropriate safety seat.

5. The driver or appropriate staff person shall check the vehicle at the completion of each trip to ensure that no child is left in the vehicle.

a. The PDHC facility shall maintain documentation that includes the signature of the person conducting the check and the time the vehicle is checked. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

6. During field trips, the driver or staff member shall check the vehicle and account for each child upon arrival at, and departure from, each destination to ensure that no child is left in the vehicle or at any destination.

a. The PDHC facility shall maintain documentation that includes the signature of the person conducting the check and the time the vehicle was checked for each loading and unloading of children during the field trip. Documentation shall be maintained on file at the PDHC facility whether transportation is provided by the facility or contracted.

7. Appropriate staff person(s) shall be present when each child is delivered to the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2193-40:2193.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2771 (December 2009), amended LR 41:

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

* * *

Pediatric Day Health Care (PDHC) Providers—a facility that may operate seven days a week, not to exceed 12 hours a day, to provide care for medically fragile children under the age of 21, including technology dependent children who require close supervision. Care and services to be provided by the pediatric day health care facility shall include, but not be limited to:

a. nursing care, including, but not limited to:
   i. tracheotomy and suctioning care;
   ii. medication management; and
   iii. intravenous (IV) therapy;
b. respiratory care;
c. physical, speech, and occupational therapies;
d. assistance with activities of daily living;
e. transportation services; and
f. education and training.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), amended LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:

§12503. General Information

A. - B. …

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 3. …
4. hospice providers or inpatient hospice facilities;
5. outpatient abortion facilities; and
6. pediatric day health care facilities.

D. - F.4. …

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs-DD, ADHC providers, hospice providers, outpatient abortion facilities, and pediatric day health care centers that meet one of the following conditions:

1. - 3. …

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012;

5. outpatient abortion facilities which were licensed by the department on or before May 20, 2012; or

6. pediatric day health care providers that were licensed by the department before March 1, 2014, or an entity that meets all of the following requirements:

a. has a building site or plan review approval for a PDHC facility from the Office of State Fire Marshal by March 1, 2014;

b. has begun construction on the PDHC facility by April 30, 2014, as verified by a notarized affidavit from a licensed architect submitted to the department, or the entity had a fully executed and recorded lease for a facility for the specific use as a PDHC facility by April 30, 2014, as verified by a copy of a lease agreement submitted to the department;

c. submits a letter of intent to the department's Health Standards Section by April 30, 2014, informing the department of its intent to operate a PDHC facility; and

d. becomes licensed as a PDHC by the department no later than December 31, 2014.

H. - H.2. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 38:1961 (August 2012), LR 41:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12508. Pediatric Day Health Care Providers

A. No PDHC provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of a PDHC provider license. Once the FNR Program approval is granted, a PDHC provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. For purposes of facility need review, the service area for a proposed PDHC shall be within a 30 mile radius of the proposed physical address where the provider will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional PDHC provider in the geographic location and service area for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application, and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other PDHC providers in the same geographic location, region, and service area servicing the same population; and

b. allegations involving issues of access to health care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access health care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferable and are limited to the location and the name of the original licensee.

1. A PDHC provider undergoing a change of location in the same licensed service area shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. A PDHC provider undergoing a change of location outside of the licensed service area shall submit a new FNR application and appropriate fee and undergo the FNR approval process.

2. A PDHC provider undergoing a change of ownership shall submit a new application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 19. Pediatric Day Health Care Program

Chapter 275. General Provisions

§27503. Recipient Criteria

A. In order to qualify for PDHC services, a Medicaid recipient must meet the following criteria. The recipient must:

1. ...

2. require ongoing skilled medical care or skilled nursing care by a knowledgeable and experienced licensed professional registered nurse (RN) or licensed practical nurse (LPN);

3. have a medically complex condition(s) which require frequent, specialized therapeutic interventions and close nursing supervision. Interventions are those medically necessary procedures provided to sustain and maintain health and life. Interventions required and performed by individuals other than the recipient's personal care giver would require the skilled care provided by professionals at PDHC centers. Examples of medically necessary interventions include, but are not limited to:

a. suctioning using sterile technique;

b. provision of care to a ventilator dependent and/or oxygen dependent recipients to maintain patent airway and adequate oxygen saturation, inclusive of physician consultation as needed;

c. monitoring of blood pressure and/or pulse oximetry level in order to maintain stable health condition and provide medical provisions through physician consultation;

d. maintenance and interventions for technology dependent recipients who require life-sustaining equipment; or

e. complex medication regimen involving, and not limited to, frequent change in dose, route, and frequency of multiple medications, to maintain or improve the recipient's health status, prevent serious deterioration of health status and/or prevent medical complications that may jeopardize life, health or development;

4. have a medically fragile condition, defined as a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals are medically complex and potentially dependent upon medical devices, experienced medical supervision, and/or medical interventions to sustain life;

a. medically complex may be considered as chronic, debilitating diseases or conditions, involving one or more physiological or organ systems, requiring skilled medical care, professional observation or medical intervention;

b. examples of medically fragile conditions include, but are not limited to:

i. severe lung disease requiring oxygen;

ii. severe lung disease requiring ventilator or tracheotomy care;

iii. complicated heart disease;

iv. complicated neuromuscular disease; and

v. unstable central nervous system disease;

5. have a signed physician's order, not to exceed 180 days, for pediatric day health care by the recipient's physician specifying the frequency and duration of services; and

6. be stable for outpatient medical services.

B. If the medical director of the PDHC facility is also the child's prescribing physician, the department reserves the right to review the prescription for the recommendation of the child's participation in the PDHC Program.

1. - 1.j. Repealed.

C. Re-evaluation of PDHC services must be performed, at a minimum, every 120 days. This evaluation must include a review of the recipient's current medical plan of care and provider agency documented current assessment and progress toward goals.

D. A face-to-face evaluation shall be held every four months by the child's prescribing physician. Services shall be revised during evaluation periods to reflect accurate and appropriate provision of services for current medical status.

E. Physician's orders for services are required to individually meet the needs of each recipient and shall not be in excess of the recipient's needs. Physician orders prescribing or recommending PDHC services do not, in themselves, indicate services are medically necessary or indicate a necessity for a covered service. Eligibility for participation in the PDHC Program must also include meeting the medically complex provisions of this Section.

F. When determining the necessity for PDHC services, consideration shall be given to all of the services the recipient may be receiving, including waiver services and other community supports and services. This consideration must be reflected and documented in the recipient's treatment 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, Bureau of Health Services Financing, LR 36:1557 (July 2010), amended LR 41:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of

Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

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.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to J. Ruth Kennedy, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Kennedy is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 26, 2014 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Pediatric Day Health Care Program

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 net state general fund programmatic savings of $146,770 for FY 14-15, $151,182 for FY 15-16 and $155,345 for FY 16-17. It is anticipated that $1,886 ($943 SGF and $943 FED) will be expended in FY 14-15 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately $240,676 for FY 14-15, $249,830 for FY 15-16 and $257,697 for FY 16-17. It is anticipated that $943 will be expended in FY 14-15 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 62.06 percent in FY 14-15 and 62.30 in FY 15-16. The enhanced rate of 62.11 percent for the first three months of FY 15 is the federal rate for disaster-recovery FMAP adjustment states.

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

This proposed Rule continues the provisions of the April 20, 2014 Emergency Rule which amended the licensing standards for PDHC facilities to revise the provisions governing provider participation, development and educational services and transportation requirements, adopted provisions for the inclusion of PDHC facilities in the Facility Need Review Program, amended the provisions governing pediatric day health care services, and revised the additional grandfather provisions for the Facility Need Review process for the PDHC Program. It is anticipated that implementation of this proposed rule will reduce expenditures in the PDHC program by approximately $389,332 for FY 14-15, $401,012 for FY 15-16 and $413,042 for FY 16-17.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

J. Ruth Kennedy	Evan Brasseaux
Medicaid Director	Staff Director
1410#076	Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Emergency Response Network Board

Trauma Protocols, Stroke Protocols and STEMI Protocols
(LAC 48:I.Chapters 191, 193 and 195)

Notice is hereby given that the Louisiana Emergency Response Network Board has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and intends to codify in LAC 48:I.Chapters 191, 193 and 195, all protocols heretofore adopted and promulgated by the Louisiana Emergency Response Network Board for the transport of trauma and time sensitive ill patients, adopted as authorized by R.S. 9:2798.5.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 15. Louisiana Emergency Response Network Board

Chapter 191. Trauma Protocols

§19101. Entry Criteria and Region 4 LERN LCC Destination Protocol

A. On November 15, 2007, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated "LERN Entry Criteria" and "LERN Region 4

LCC Destination Protocol" for region 4 of the Louisiana Emergency Response Network [R.S. 40:2842(3)], which region includes the parishes of Acadia, Evangeline, Iberia, Lafayette, St. Martin, St. Landry, and Vermilion, as follows.

1. LERN Entry Criteria

LERN Entry Criteria		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES→	Call LCC
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	Call LCC
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and > 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	Call LCC
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	Call LCC
Mechanism		
☐ Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash Intrusion > 12 in. occupant site: >20 in. any site ☐ Ejection, partial or complete from automobile ☐ Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or >5 MPH impact ☐ Motorcycle crash >20 MPH	YES→	Call LCC
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	Call LCC
Other		
☐ Age ≥55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	Call LCC

2. LERN Region 4 LCC Destination Protocol

LERN Region 4 LCC Destination Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES →	Closest ED
NO ↓		
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES →	LERN Level II
NO ↓		
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and ≥ 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES →	LERN Level II or III
NO ↓		
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES →	LERN Level II or III
↓		
Mechanism		
☐ Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash ☐ Intrusion > 12 in. occupant site: >20 in. any site ☐ Ejection, partial or complete from automobile ☐ Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or >5 MPH impact ☐ Motorcycle crash >20 MPH	YES →	LERN Level II or III
NO ↓		
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES →	LERN
NO ↓		
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES →	LERN Level II, III or IV

B. On June 26, 2008, the Louisiana Emergency Response Network Board passed a resolution allowing any region of the Louisiana Emergency Response Network which agreed to use the foregoing "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol" to begin operating using the "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol" set forth above.

C. This protocol was published at LR 35:1181-1183 (June 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19103. Region 7 LERN Entry and Destination Protocols

A. On November 15, 2007, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated "Region 7 LERN Entry and Destination Protocol" for region 7 of the Louisiana Emergency Response Network [R.S. 40:2842(3)], which region includes the parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster, as follows.

1.a. Traumatic patients who meet the following criteria will be entered to LERN call center and should be transported directly to LSUHSC in Shreveport, Louisiana, if possible:

i. airway compromise (intubated, apneic, or obstructed airway);

ii. penetrating wound of head, neck, chest, abdomen, groin, or buttocks;

iii. blood pressure ≤ 100 or signs of shock;

iv. GCS 12 or less;

v. new onset neurological deficit associated with traumatic event;

vi. extremity wound with absent pulse or amputation proximal to foot or hand.

b. Trauma patients who meet the following criteria, and are located outside the city limits of Shreveport and Bossier City, should be taken to nearest hospital for immediate stabilization followed by continued rapid transport to LSUHSC Shreveport per the LERN hospital protocol:

i. unable to establish and maintain adequate airway/ventilation;

ii. hypotension unresponsive to crystalloids (no more than 2 L);

iii. patients who meet trauma center criteria but have a transport time > 60 minutes;

iv. traumatic arrest.

B. On May 8, 2008, the Louisiana Emergency Response Network Board (R.S. 40:2842(1)) amended and promulgated, as amended, "Region 7 LERN Entry and Destination Protocol" for region 7 of the Louisiana Emergency Response Network (R.S. 40:2842(3)), which region includes the parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster, which protocol was originally adopted and promulgated on November 15, 2007, so that the "Region 7 Louisiana Emergency Response Network Entry and Destination Protocol," as amended, effective May 8, 2008, is as follows.

1.a. Traumatic patients who meet the following criteria will be entered to LERN call center and should be transported directly to LSUHSC in Shreveport, if possible:

i. airway compromise (intubated, apneic, or obstructed airway);

ii. penetrating wound of head, neck, chest, abdomen, groin, or buttocks;

iii. blood pressure ≤ 100 or signs of shock;

iv. GCS 12 or less;

v. new onset neurological deficit associated with traumatic event;

vi. extremity wound with absent pulse or amputation proximal to foot or hand;

vii. burn patients as identified following ABA guidelines;

viii. *healthcare provider discretion*—patients evaluated by hospitals may be entered into LERN if the evaluating hospitals medical personnel determines the patient has a medical condition requiring immediate surgical evaluation and/or intervention and the transferring hospital does not have these services immediately available at that facility (H*ealthcare* P*rovider* D*iscretion* does not include orthopedic injuries).

b. Patients that have been entered into LERN but will require greater than 60 minute transport time from the field should stop at local area hospitals for stabilization. These patients should still be entered into LERN from the field but will require transport to local area hospitals for stabilization. LERN will facilitate the movement of these patients from the local hospital once stabilizing measures are completed.

i. The following are conditions requiring immediate stabilization by local area hospitals:

(a). unable to establish and maintain adequate airway/ventilation;

(b). hypotension unresponsive to crystalloids (no more than 2 L);

(c). patients who meet trauma center criteria but have a transport time > 60 minutes;

(d). traumatic arrest.

C. The following will be routed directly to the LSUHSC Burn Unit from local area hospitals or from the field:

1. partial-thickness and full thickness burns greater than 10 percent of the total body surface area (TBSA) in patients younger than 10 years of age or older than 50 years of age;

2. partial-thickness and full thickness burns greater than 20 percent of the total body surface area (TBSA) in other age groups;

3. partial-thickness and full thickness burns involving the face, eyes, ears, hands, feet, genitalia, perineum, or skin overlying major joints;

4. full-thickness burns greater than 5 percent TBSA in any age group;

5. electrical burns, including lightning injury;

6. chemical burns;

7. patients with inhalation injury;

8. burn injury in patients with pre-existing illnesses that could complicate management, prolong recovery, or adversely affect mortality risk;

9. any burn patient in whom concomitant trauma poses an increased risk of morbidity or mortality may be treated initially in a trauma center until stable before transfer to a burn center;

10. children with burns seen in hospitals without qualified personnel or equipment for their care;

11. burn injury in patients who will require special social and emotional or long-term rehabilitative support, including cases involving suspected child abuse or neglect.

D. These protocols were published at LR 35:1183-1184 (June 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19105. Standard LERN Entry Criteria; Standard Destination Protocol

A. On June 18, 2009, the Louisiana Emergency Response Network Board (R.S. 40:2842(1)) adopted and promulgated "Standard LERN Entry Criteria" and "Standard Destination Protocol" for use in all regions, except region 7, of the Louisiana Emergency Response Network (R.S. 40:2842(3)), replacing the "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol," adopted and promulgated November 15, 2007, as follows.

1. Standard LERN Entry Criteria—Pre-Hospital and Hospital Triage Protocol

Standard LERN Entry Criteria Pre-Hospital and Hospital Triage Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES→	Call LCC
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	Call LCC
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and > 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	Call LCC
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	Call LCC

Standard LERN Entry Criteria Pre-Hospital and Hospital Triage Protocol		
Mechanism		
☐ Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash Intrusion > 12 in, occupant site: >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact ☐ Motorcycle crash >20 MPH	YES→	Call LCC
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	Call LCC
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	Call LCC

2. Standard Destination Protocol

Standard Destination Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES→	Closest ED
NO ↓		
Neurologic Trauma		
☐ GCS <14 ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	LERN Level I or II
NO ↓		
Physiologic		
☐ SBP <90 (adults and >9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and >9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	LERN Level I, II or III
NO ↓		
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)	YES→	LERN Level I, II or III

Standard Destination Protocol		
NO ↓		
Mechanism		
Falls >20 ft. (adults) >10 ft. (child) or 2 to 3 times height High-risk auto crash • Intrusion >12 in. occupant site: • >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact Motorcycle crash >20 MPH	YES→	LERN Level II or III
NO ↓		
Special		
Pregnancy >20 weeks Burns (will follow ABA guidelines)	YES→	LERN Level II or III
NO ↓		
Other		
Age ≥ 55 y/o or <8 y/o Anticoagulation and bleeding disorders End stage renal disease Transplant patients	YES→	LERN Level II, III or IV

B. These protocols were published at LR 35:1409 (July 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19107. Interregional Transfer Protocol

A. On June 18, 2009, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated "Interregional Transfer Protocol" for the Louisiana Emergency Response Network [R.S. 40:2842(3)], as follows.

1. The LERN interregional transfer protocol only applies to those regions and (hospitals/EMS) that are participating in the LERN network.

2. The interregional transfer protocol will be tested over a 90 day period. At the end of the 90 days all interregional transfers will be reviewed for compliance with protocols, quality, patient safety and standards of care. This information will be shared with commissions of the regions participating as well as the LERN board and the "design the system group". Decisions regarding the interregional transfer protocol will be made at the end of the 90 days trial period.

3. Interregional Transfer Protocol

a. All patients whose condition exceeds the regionally available resources provided by local area hospitals may be transferred from one region to another following LERN interregional transfer protocol. Destination to the definitive care hospital in the receiving region will follow the LERN standard protocol (all laws regarding EMTALA apply).

b. Only regions operating with the LERN standard protocol will be involved in the LERN interregional transfer protocol.

c. Patients being transferred via the LERN interregional transfer protocol must:

i. be assessed at a local area hospital for treatment and stabilized by a physician and meet the entry criteria as determined by LERN standard protocol;

ii. treating physician will call LERN to request a transfer to another hospital;

iii. LCC (LERN call center) will determine the closest and most appropriate facility available following LERN standard protocol;

iv. if there are no available resources in the region then the LCC will locate an appropriate facility outside the region, and an interregional transfer will be considered. (All LERN interregional transfers will be reviewed by LERN medical directors and data will be collected for QI/PI.)

d. Exceptions

i. EMS requesting LERN for patients located on or close to borders between two regions will and can be directed to either region based on the patient needs and available resources.

ii. Air-med at the scene that is able to mitigate the time of transfer of long distances will and can be directed to hospitals outside the region they originate from based on patients needs and available resources.

iii. LERN medical directors will be involved in the decision making (real time) in all patients that fall into the exception category.

B. On August 20, 2009, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] adopted and promulgated the amended "Interregional Transfer Protocol" for the Louisiana Emergency Response Network [R.S. 40:2842(3)], as follows.

1. The LERN Interregional Transfer Protocol only applies to those regions, hospitals and pre-hospital providers that are participating in the LERN network.

2. The interregional transfer protocol will be tested over a 90 day period, at the end of which all interregional transfers will be reviewed for compliance with protocols, quality, patient safety and standards of care. This information will be shared with regional commissions, LERN Board, and LERN Design the System Work Group. Decisions regarding the Interregional Transfer Protocol will be made at the end of the 90-day trial period.

3. Interregional Transfer Protocol

a. All patients whose conditions exceed the regionally available resources provided by local area hospitals may be transferred from one region to another following LERN interregional transfer protocol. Destination to the definitive care hospital in the receiving region will follow the LERN standard protocol. All laws regarding EMTALA apply.

b. Only regions operating with the LERN standard protocol will be involved in the LERN interregional transfer protocol.

c. Patients transferred via the LERN interregional transfer protocol must:

i. be assessed at a local area hospital for treatment, be stabilized by a physician, and meet the entry criteria as determined by LERN standard protocol; and

ii. have a treating physician call LERN to request a transfer to another hospital.

d. The LERN call center (LCC) will determine the closest and most appropriate facility available following LERN standard protocol.

e. If there are no available resources in the region, the LCC will locate an appropriate facility outside the region, and a interregional transfer will be considered.

f. All LERN interregional transfers will be reviewed by LERN medical directors and data will be collected for QI/PI.

g. Exceptions

i. Pre-hospital providers requesting LERN for patients located on or close to borders between regions will and can be directed to either region based on the patient needs and available resources.

ii. Air-med at the scene able to mitigate the time of transfer of long distances will and can be directed to hospitals outside the region they originate from, based on patient needs and available resources.

iii. LERN medical directors will be involved in the decision making for all patients in the exception category.

C. These protocols were published at LR 35:2109-2110 (September 20, 2009).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19109. Standard LERN Entry and Destination Criteria

A. On October 21, 2010, the Louisiana Emergency Response Network Board [R.S. 40:2842(1)] revised, adopted and promulgated "Standard LERN Entry Criteria" and "Standard Destination Protocol" for use in all regions, except region 7, of the Louisiana Emergency Response Network [R.S. 40:2842(3)], replacing the "LERN Entry Criteria" and "LERN Region 4 LCC Destination Protocol," adopted and promulgated June 18, 2009, as follows.

1. Standard LERN Entry Criteria—Pre-Hospital and Hospital Triage Protocol

Standard LERN Entry Criteria Pre-Hospital and Hospital Triage Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES→	Call LCC
Neurologic Trauma		
☐ GCS <14 + one or more of the following: ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	Call LCC
Physiologic		
☐ SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and ≥ 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	Call LCC
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture	YES→	Call LCC

Standard LERN Entry Criteria Pre-Hospital and Hospital Triage Protocol		
☐ Hip fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls ☐ Major joint dislocations (hip, knee, ankle, elbow) ☐ Open Fractures ☐ Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)		
Mechanism		
☐ Falls >20 ft. (adults) >10 ft. (child) or 2 to 3 times height ☐ High-risk auto crash Intrusion >12 in. occupant site: >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment ☐ Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact ☐ Motorcycle crash >20 MPH	YES→	Call LCC
Special		
☐ Pregnancy >20 weeks ☐ Burns (will follow ABA guidelines)	YES→	Call LCC
Other		
☐ Age ≥ 55 y/o or <8 y/o ☐ Anticoagulation and bleeding disorders ☐ End stage renal disease ☐ Transplant patients	YES→	Call LCC

2. Standard Destination Protocol

Standard Destination Protocol		
☐ Unmanageable Airway ☐ Tension Pneumothorax ☐ Traumatic cardiac arrest ☐ Burn patient without patent airway ☐ Burn patient >40% BSA without IV	YES→	Closest ED
NO ↓		
Neurologic Trauma		
☐ GCS <14 ☐ Penetrating head injury or depressed skull fracture ☐ Open head injury with or without CSF leak ☐ Deterioration of the GCS ☐ Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit)	YES→	LERN Level I or II
NO ↓		
Physiologic		
☐ SBP <90 (adults and >9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) ☐ RR <10 or >29 (adults and ≥9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (<12 m/o)	YES→	LERN Level I, II or III
NO ↓		
Anatomic		
☐ All penetrating injuries to neck, torso and extremities proximal to elbow and knee ☐ Flail Chest ☐ 2 or more proximal long-bone fractures ☐ Crush, degloved or mangled extremity ☐ Amputation proximal to wrist and ankle ☐ Pelvic Fracture ☐ Hip fractures (hip tenderness, deformity,	YES→	LERN Level I, II or III

Standard Destination Protocol		
lateral deviation of foot) excluding isolated hip fractures from same level falls Major joint dislocations (hip, knee, ankle, elbow) Open Fractures Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture, etc.)		
NO ↓		
Mechanism		
Falls >20 ft. (adults) >10 ft. (child) or 2 to 3 times height High-risk auto crash • Intrusion >12 in. occupant site: • >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact Motorcycle crash >20 MPH	YES→	LERN Level II or III
NO ↓		
Special		
Pregnancy >20 weeks Burns (will follow ABA guidelines)	YES→	LERN Level II or III
NO ↓		
Other		
Age ≥ 55 y/o or <8 y/o Anticoagulation and bleeding disorders End stage renal disease Transplant patients	YES→	LERN Level II, III or IV

B. These protocols were published at LR 36:2743-2745 (November 20, 2010).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19111. Interregional Transfer Protocol

A. On January 20, 2011, the Louisiana Emergency Response Network Board (R.S. 40:2842(1) and (3)) adopted and promulgated "LERN Hospital Interregional Transfer Guidelines" and "LERN Hospital Interregional Transfer Protocol", replacing "Interregional Transfer Protocol" adopted June 18, 2009, as follows.

1. LERN Hospital Interregional Transfer Guidelines

a. All patients whose conditions exceed the regionally available resources provided by local area hospitals may be transferred from one region to another following LERN interregional transfer protocol.

b. The LERN hospital interregional transfer protocol only applies to hospitals that are participating in the LERN network.

c. Regions or individual parishes that have MOU's (which include medical control and destination guidelines), between an ACS verified level 1 trauma center and a local parish medical society(ies) will be incorporated into the LCC standard operating procedure for the effected region(s).

2. LERN Hospital Interregional Transfer Protocol

a. Patients transferred via the LERN hospital interregional transfer protocol must:

i. meet LERN standard entry criteria that requires resources and/or capabilities not available in that region;

ii. be assessed and stabilized to the best of their ability at a local area hospital prior to transport to the closest appropriate hospital;

iii. the treating physician/nurse must contact LERN to request a transfer. The LERN communications center (LCC) will determine the closest and most appropriate facility available following the LERN standard destination protocol.

B. These guidelines and protocols were published at LR 37:751 (February 20, 2011).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19113. LERN Entry Criteria: Trauma; LERN Destination Protocol: Trauma

A. On January 20, 2011, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN ENTRY CRITERIA: Trauma; Pre-Hospital and Hospital Triage Protocol" and "LERN DESTINATION PROTOCOL: Trauma" replacing the "Standard LERN Entry Trauma Criteria" and "Standard LERN Entry Trauma Criteria Destination Protocol" adopted and promulgated January 20, 2011, as follows.

1. LERN Entry Criteria: Trauma

a. Pre-Hospital and Hospital Triage Protocol

Call LERN Communications Center for:
• Unmanageable Airway • Tension Pneumothorax • Traumatic cardiac arrest • Burn Patient without patent airway • Burn patient >40% BSA without IV
Physiologic
• GCS <14 • SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8 y/o) <70 (age 1 to 12 months) <60 (term neonate) • RR <10 or >29 (adults & ≥ 9 y/o) <15 or >30 (age 1 to 8 y/o) <25 or >50 (<12 m/o)
Anatomic
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, and extremities proximal to elbow and knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist and ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture)
Mechanism
• Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact

• Motorcycle crash >20 MPH • High-risk auto crash • Intrusion >12 in, occupant site >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment
Other
• Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥ 55 y/o or <8 y/o • Anticoagulation & bleeding disorders • End stage renal disease • Transplant patients
Multi/Mass Casualty Incident (MCI)

2. LERN Destination Protocol: Trauma

LERN Destination Protocol: Trauma		
• Unmanageable Airway • Tension Pneumothorax • Traumatic cardiac arrest • Burn patient without patent airway • Burn patient >40% BSA without IV	YES→	Closest ED
Physiologic		
• GCS < 14 • SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8) <70 (age 1 to 12 months) <60 (term neonate) • RR <10 or >29 (adults and > 9 y/o) <15 or >30 (age 1 to 8) <25 or >50 (< 12 m/o)	YES→	LERN Level I, II, or III
Anatomic		
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to neck, torso and extremities proximal to elbow and knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist and ankle • Pelvic Fracture • Hip fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture	YES→	LERN Level I, II, or III
Mechanism		
Falls > 20 ft. (adults) > 10 ft. (child) or 2 to 3 times height High-risk auto crash Intrusion > 12 in. occupant site: >18 in. any site Ejection, partial or complete from automobile Death in same passenger compartment Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact Motorcycle crash >20 MPH	YES→	LERN Level II, or III
Other		
• Pregnancy > 20 weeks • Burns (follow ABA guidelines) • Age >55 y/o or <8 y/o • Anticoagulation and bleeding disorders • End stage renal disease • Transplant patients	YES→	LERN Level II, III, or IV

LERN Destination Protocol: Trauma		
MULTI/MASS CASUALTY INCIDENT (MCI)	YES→	LERN Level I, II, III, or IV

B. These protocols were published at LR 37:1466-1468 (April 20, 2011).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19115. LERN Destination Protocol: TRAUMA

A. On April 26, 2012, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: Trauma" replacing the "LERN Destination Protocol: Trauma" adopted and promulgated April 21, 2011, as follows.

• Unmanageable Airway • Tension Pneumothorax • Traumatic cardiac arrest • Burn Patient without patent airway • Burn patient >40% BSA without IV	→	Closest ED
Physiologic		
• GCS <14 • SBP <90 (adults and > 9 y/o) <70 + 2 [age (yrs)] (age 1 to 8 y/o) <70 (age 1 to 12 months) <60 (term neonate) • RR <10 or >29 (adults and ≥ 9 y/o) <15 or >30 (age 1 to 8 y/o) <25 or >50 (<12 m/o)	→	Level I, II, or III*
Anatomic		
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, & extremities proximal to elbow & knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist & ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture)	→	Level I, II, or III*
Mechanism		
• Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • High-risk auto crash • Intrusion > 12 in. occupant site > 18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact	→	Level I, II, or III*

• Motorcycle crash >20 MPH		
Other		
• Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥ 55 y/o or <8 y/o • Anticoagulation and bleeding disorders -patients w/ head injuries are at high risk for rapid deterioration	→	Level II, or III*
MULTI/MASS CASUALTY INCIDENT (MCI)	→	Level I, II, or III*

*Refers to ACS Verified Level Trauma Center—Where trauma center not available, patient will be routed to facility with appropriate resource which may not need be the highest level facility.

B. This protocol was published at LR 38:1462-1463 (June 20, 2012).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

§19117. LERN Destination Protocol: Trauma

A. On November 21, 2013, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: TRAUMA" replacing the "LERN Destination Protocol: Trauma" adopted and promulgated April 26, 2012, and repealing "LERN ENTRY CRITERIA, Trauma Pre-Hospital and Hospital Triage Protocol" adopted and promulgated April 21, 2011, as follows.

1. Call LERN Communication Center at (866) 320-8293 for patients meeting the following criteria.

• Unmanageable airway • Tension pneumothorax • Traumatic cardiac arrest • Burn patient without patent airway • Burn patient > 40 % BSA without IV	→	Closest ED/Trauma Center
NO ↓		
Physiologic		
• GCS < 14 • SBP < 90 (adults and > 9 y/o) < 70 + 2 [age (yrs)] (age 1 to 8 y/o) < 70 (age 1 to 12 months) < 60 (term neonate) • RR < 10 or > 29 (adults & ≥ 9 y/o) < 15 or > 30 (age 1 to 8 y/o) < 25 or > 50 (< 12 m/o)	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
NO ↓		
Anatomic		
• Open or depressed skull fractures • Open head injury with or without CSF leak • Lateralizing signs or paralysis (i.e., one-sided weakness, motor, or sensory deficit) • All penetrating injuries to head, neck, torso, and extremities proximal to elbow and knee • Flail Chest • 2 or more proximal long-bone fractures • Crush, degloved or mangled extremity • Amputation proximal to wrist and ankle • Pelvic Fractures • Hip Fractures (hip tenderness, deformity, lateral deviation of foot) excluding isolated hip fractures from same level falls • Major joint dislocations (hip, knee, ankle, elbow) • Open Fractures • Fractures with neurovascular compromise (decreased peripheral pulses or prolonged capillary refill, motor or sensory deficits distal to fracture)	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
NO ↓		
Mechanism		
• Falls >20 ft. adults >10 ft. (child) or 2 to 3 times height • High-risk auto crash • Intrusion >12 in. occupant site >18 in. any site • Ejection, partial or complete from automobile • Death in same passenger compartment • Auto vs. pedestrian/bicyclist thrown, run over or significant (>20 MPH) impact • Motorcycle crash >20 MPH	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
NO ↓		
Other		
• Pregnancy >20 weeks • Burns (follow ABA guidelines) • Age ≥ 55 y/o or <8 y/o • Anticoagulation and bleeding disorders – patients w/ head injuries are at high risk for rapid deterioration	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center
MULTI/MASS CASUALTY INCIDENT (MCI)	→	To Appropriate Trauma Center or Hospital as Determined by LERN Communication Center

B. This protocol was published at LR 40:190-191 (January 20, 2014).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Emergency Response Network Board, LR 41:

Chapter 193. Stroke Protocols

§19301. LERN Destination Protocol: Stroke

A. On November 21, 2013, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "LERN Destination Protocol: STROKE," as follows.

1. The following protocol applies to patients with suspected stroke.

Compromise Of: • Airway • Breathing • Circulation	→	Closest ED
NO ↓		

• All other patients with suspected stroke Patients with seizure with focal deficit, extended window (4-8 hrs from onset), and patients with unknown onset may benefit from evaluation at Level I or II hospital with on-site stroke expertise.	→	Transport to LERN Stroke Level I, II, or III
NO ↓		
Terminally Ill or Palliative Care Patient	→	Transport to LERN Stroke Level I, II, III, or IV
Guiding principles: • Time is the critical variable in acute stroke care. • Protocols that include pre-hospital notification while en route by EMS should be used for patients with suspected acute stroke to facilitate primary destination efficiency. • Treatment with intravenous tPA is the only FDA approved acute therapy for stroke. • EMS should identify the geographically closest facility capable of providing tPA treatment. • Transfer patient to the nearest hospital equipped to provide tPA treatment. • Secondary transfer to facilities equipped to provide tertiary care and interventional treatments should not prevent administration of tPA to appropriate patients.		

B. This protocol was published at LR 40:189-190 (January 20, 2014).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

Chapter 195. STEMI Protocols

§19501. STEMI Triage Protocol for Pre-Hospital Providers

A. On November 21, 2013, the Louisiana Emergency Response Network Board [R.S. 40:2842(1) and (3)] adopted and promulgated "STEMI Triage Protocol for Pre-Hospital Providers," as follows.

Acute coronary symptoms ≥ 15 minutes and < 12 hours AND 12 lead ECG criteria of 1 mm ST elevation in 2 or more contiguous leads OR LBBB NOT KNOWN to be present in the past EMS ECG interpreted or transmitted to hospital for MD consult for bypass and activation		
↓		
STEMI-Receiving Center with medical contact-to-device (PCI) ≤ 90 minutes (by ground or air)?	YES→	Transport to nearest STEMI-Receiving Center with pre-hospital notification/activation Goal medical contact to device (PCI) time of 90 minutes or less
NO ↓		
Transport to closest STEMI-Referral Hospital with Pre-hospital notification/activation Goal medical contact to fibrinolytic needle time of 30 minutes or less	→	Transport to nearest STEMI-Receiving Center for subsequent PCI

*O'Gara PT, Kushner FG, Ascheim DD, et all. 2013 ACCF/AHA Guideline for the Management of ST-Elevation Myocardial Infraction: A Report of the American College of Cardiology Foundation/American Heart Association Task Force on Practice Guidelines. Journal of the American College of Cardiology. 2013;61(4):e78.

B. This protocol was published at LR 50:192 (January 20, 2014).

AUTHORITY NOTE: Promulgated in accordance with R.S. 9:2798.5 and R.S. 40:2846(A).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Emergency Response Network Board, LR 41:

Family Impact Statement

1. What effect will these rules have on the stability of the family? The proposed rules will not affect 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? The proposed rules will not affect 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? These rules will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? These rules will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? These rules will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the proposed rules will have no impact.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Statement

The impact of the proposed amendments to various sections of the 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 business.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and no increase on direct or indirect cost. The proposed rules will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons my submit written comments relative to the proposed Rule until 4:30 p.m., Monday, November 10,

2014 to Paige Hargrove, Louisiana Emergency Response Network, 14141 Airline Hwy., Suite B, Building 1, Baton Rouge, LA 70817, or via email to paige.hargrove@la.gov.

Paige B. Hargrove
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Trauma Protocols, Stroke Protocols and STEMI Protocols

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

This proposed rule adopts *Louisiana Administrative Code* (LAC) Title 48—Public Health General, Part I—General Administration, Subpart 15 – Louisiana Emergency Response Network Board, Chapter 191 – Trauma Protocols, Chapter 193 – Stroke Protocols and Chapter 195 – STEMI Protocols, and Sections 19101 – 19501. The Louisiana Emergency Response Network (LERN) Board is authorized to adopt protocols for the transport of trauma and time sensitive ill patients. Time sensitive ill patients include (1) stroke patients; and (2) STEMI (commonly known as heart attack) patients.

Since 2009, the LERN Board has previously adopted protocols for trauma patients that were published in the Potpourri Section (announcements and various information that will never become part of the LAC) of the *State Register*. This proposed rule codifies the protocols in Chapter 191—Trauma Protocols, Section 19101-19117. On November 21, 2013, the LERN Board adopted protocols for stroke patients and STEMI patients that were published in the Potpourri Section of the *State Register*. This proposed rule codifies the protocols in Chapter 193—Stroke Protocols, Section 19301 and Chapter 195—STEMI protocols, Section 19501. The proposed rules, therefore, codifies all protocols previously adopted by the Louisiana Emergency Response Network Board.

Other than the cost to publish in the *State Register*, which is estimated to be $3,280 in FY 15, it is not anticipated that the proposed rules will result in any material costs or savings to LERN or any state or local governmental unit.

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

There is no anticipated effect on revenue collection of state or local governmental units as a result of this proposed rule change.

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

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups. The proposed rule is simply a codification of protocols as authorized by La. R.S. 9:2798.5A.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of these rules.

Paige B. Hargrove
Executive Director
1410#027

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals
Office for Citizens with Developmental Disabilities

Infant Intervention Services (LAC 48:IX.334)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities (OCDD) adopts LAC Title 48:IX.334 as directed by House Bill 1 of the 2013 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 proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq.

Act 417 of the 2013 Regular Session of the Louisiana Legislature provides for authority for the department to establish a statewide system of payments; to make provisions relative to payment for services; to allow for uses of funds for provision of certain services; and provides for authority to establish a schedule of fees for services provided to certain recipients in EarlySteps, Louisiana's Early Intervention Program for Infants and Toddlers with Disabilities and their Families.

Due to a budgetary shortfall in state fiscal year 2014, the Department of Health and Hospitals promulgated an Emergency Rule which amended the provisions governing the payment for some EarlySteps services (*Louisiana Register*, Volume 39, Number 9). This proposed Rule is being promulgated to continue the provisions of the October 1, 2013 Emergency Rule. It is estimated that implementation of this Emergency Rule will increase revenue by approximately $1,200,000 for state fiscal year 2013-2014. This action is being taken to avoid a budget deficit in the Office for Citizens with Developmental Disabilities.

Effective October 1, 2014, the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities establishes a system of payments for some services provided through the EarlySteps Program.

Title 48
PUBLIC HEALTH—GENERAL
Part IX. Developmental Disabilities Services
Chapter 3. Infant Intervention Services
§334. System of Payments

A. The department shall have the authority to establish a statewide system of payments in accordance with 34 CFR part 303.

B. In implementing the system of payments:

1. the department establishes a schedule of monthly cost participation for early intervention services per qualifying family. Cost participation shall be based on a sliding scale;

2. application of the family's cost share using the sliding scale will include the family's adjusted gross income, family size, financial hardship, extraordinary expenses associated with the eligible child, and Medicaid eligibility;

a. extraordinary expenses may include but are not limited to unreimbursed medical expenses, equipment, home modifications, or other costs associated with the child with a disability;

b. extraordinary expenses must have been incurred during the calendar year that the family's cost share for individualized family services plan (IFSP) services is applied;

c. the family will be required to produce invoices, receipts, or other documents which establish the costs and payment for these expenses;

d. the family may request a reassessment of their costs based on extraordinary expenses at any time if there are significant changes affecting the determination of the cost participation amount. The request will be in writing and submitted to the service coordinator;

e. the request for reassessment will be considered by the designated EarlySteps office for a determination of the family's request. The family and the service coordinator will receive the department's written response;

3. the sliding scale shall utilize the most recent federal poverty guidelines issued in the *Federal Register* by the United States Department of Health and Human Services as the basis for determining the income threshold based on family size for eligibility for cost participation;

4. the department shall not assess any fee or other charge through the cost participation schedule upon a family which has an annual income of less than 300 percent of the federal poverty level;

5. the department shall not assess fees or other charges through the cost participation schedule which totals more than 3 percent of the monthly income level for a family of four, according to the federal poverty guideline schedule which will be updated annually;

6. once the family's income has been verified with the required documentation and the IFSP services have been determined by the IFSP team, the following will occur:

a. the system point of entry office will issue the cost participation statement to notify the family of their assessed costs which will be reviewed with the family and a copy provided;

b. following the submission of service claims by the child's provider, the Central Finance Office (CFO) will mail a monthly explanation of payment statement (EOP) to the family for payment. The EOP will include a notice of the family's right for reconsideration of their financial status and their right to apply for exemption from cost participation due to financial hardship;

c. families will remit reimbursement to the CFO at the address provided in the EOP;

7. when a family is not complying with the cost participation requirements and procedures for suspending services, the following will occur related to the status of the child's services;

a. a notice will be issued to the family, to the service coordinator and to the designated EarlySteps office;

b. the CFO will notify the department when the family is in arrears for a duration of three months at which time the service coordinator will discuss the family's options with the family and assist the department with its determination of the status of the child's IFSP services;

c. if the family provides its consent, a copy of the notice that the family is in arrears with payment for three months will be sent to the representative and senator in whose district the family resides;

d. the department will make a written determination regarding the status of the child's IFSP services following review of information provided by the service coordinator and the family. Families will be offered the option to continue to receive services available at no cost if they choose according to the no-cost provisions which follow;

e. the department shall not limit early intervention services for a child in any month if the cost for the services in that month exceeds the maximum contribution from the child's family.

C. Parents who have public insurance (Medicaid) and elect not to assign such right of recovery or indemnification to the department or choose not to release financial information will be assessed the cost for each early intervention service listed on the IFSP according to the most current service rate schedule and the cost participation schedule.

D. No-Cost Provision: the following services that a child is otherwise entitled to receive will have no costs assessed to the parents:

1. child find activities;

2. evaluation and assessment for eligibility and IFSP planning;

3. service coordination, administrative and coordinative activities related to the development review, and evaluation of the IFSP; and

4. implementation of procedural safeguards and other components of the statewide system related to §464 of Act 417.

E. The department will provide written, prior notification to families for use of Medicaid according to the requirements of 34 CFR 303.414. This notice includes a statement that there are no costs charged by the department for use of the eligible child's Medicaid. The notification also includes a statement of the process for resolutions of disputes regarding decisions related to use of Medicaid, failure to pay for services and/or the state's determination of a family's ability to pay.

F. Dispute Resolution Process

1. The procedures used by the department to resolve such disputes will not delay or deny the parents' rights or the child's ability to access timely services.

2. The dispute resolution process can be initiated by the parent according to OCDD's policy for handling system complaints when the parent wishes to contest the imposition of a fee or the department's determination of the parents' ability to pay.

G. Parental Consent. The department will obtain parental consent prior to the use of the child's Medicaid according to the following.

1. EarlySteps will obtain written consent for the use of the child's Medicaid using its established consent for services form.

2. Parental consent will be obtained prior to the initial provision of an early intervention service in the IFSP.

3. Parental consent will be obtained when an increase in frequency, length, duration, or intensity of a service is determined in the child's IFSP.

4. If the parent does not provide consent for the use of the child's Medicaid, the department will make available only those early intervention services on the IFSP for which the parent has provided consent.

5. Parents may withdraw consent for use of their child's Medicaid at any time.

H. Determination of Family Cost. Families are liable for the costs of services that their child receives while enrolled in EarlySteps as follows:

1. The aggregate contributions made by the parent shall not exceed the aggregate cost of the early intervention services received by the child and family (factoring in any amount received from other sources for payment for that service).

2. At least annually, or at any time the department determines that a reassessment of the parent's financial circumstances is warranted, the department shall conduct such reassessment of financial status.

3. The parent has the right to request a reassessment at any time if there are significant changes affecting the determination of the cost participation amount.

4. Families who have the ability to pay and choose not to pay may be determined as ineligible to continue to receive services until payment is made.

5. The inability of the family of the eligible infant or toddler will not result in a delay or denial of services if the family does not meet the cost participation income requirements or for services for which there are no costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 41:

Family Impact Statement

It is anticipated that the proposed action will have no known or foreseeable impact on the:

1. stability of the family;

2. authority and rights of parents regarding the education and supervision of their children;

3. functioning of the family;

4. family earnings;

5. behavior and personal responsibility of children; or

6. ability of the family or a local government to perform the function as contained in the proposed action. It may have some impact on the family budget.

Poverty Impact Statement

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

1. the effect on household income and assets;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. It may have some effect on financial security to families above 300 percent of the federal poverty level.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and may have limited impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Mark A. Thomas, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. He is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2014 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.

Kathy H. Kliebert
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Infant Intervention Services

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

The proposed new rule continues the provisions of an October 1, 2013, emergency rule that implemented the Early Steps cost participation system (*Louisiana Register*, Volume 39, Number 9). Act 417 of the 2013 Regular Session provided for shared participation in the cost of early intervention services for infants and toddlers through three years of age.

The Office for Citizens with Developmental Disabilities (OCDD) within the Department of Health and Hospitals (DHH) incurred one-time development costs in the amount of $202,755 in FY 13-14 for IT system modification of the central finance office contract. The OCDD utilizes a central finance office contract for Early Steps claims submission and claims payments related to the cost participation system. In FY 14-15 and subsequent fiscal years, it is anticipated that implementation of this proposed rule will have no further development costs. The administrative expenses associated with promulgation of both this proposed rule are included in the existing central finance office contract for Early Steps claims payment and processing. Therefore, the only cost of this proposed rule is a one-time cost of $656 for printing of the Notice of Intent and Final Rule in the *Louisiana Register*.

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

As a result of assessing cost participation fees in the Early Steps program to families with income above 300% of the federal poverty level, the OCDD anticipates collecting approximately $306,500 in revenues in FY 15 as well as in FY 16 and FY 17 from eligible families participating in Early Steps services. This estimate is based on the last three months of collections and a stable population base.

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

This proposed rule is anticipated to increase costs for eligible families above 300% of the federal poverty level that participate in the Early Steps program. The OCDD anticipates approximately 300 eligible families per year will participate in cost sharing. In accordance with Act 417, the fees charged through cost participation shall not total more than 3% of the monthly income for a family of four, or $176.77 per month, at the minimum eligibility threshold.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Mark A. Thomas	John D. Carpenter
Assistant Secretary	Legislative Fiscal Officer
1410#024	Legislative Fiscal Office

NOTICE OF INTENT

Board of Supervisors of Louisiana State University and Agricultural and Mechanical College
Office of Procurement and Property Management

University Pilot Procurement Code
(LAC 34:XIII.Chapters 3-25)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and R.S. 17:3139.5(5)(c)(i), notice is given that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (LSU) proposes to adopt rules comprising the University Pilot Procurement Code as authorized by the Louisiana Granting Resources and Autonomy for Diplomas Act, (LaGrad Act) R.S. 17:3139 et seq., and approvals granted by the Board of Supervisors, Board of Regents and Division of Administration. The adoption and use of a University Pilot Procurement Code is one of several autonomies granted by the LaGrad Act for qualifying higher education institutions. Once approved by the Joint Legislative Committee on the Budget and promulgated, the University Pilot Procurement Code will be used by LSU in place of state procurement law in R.S. 39:15.3, 196 through 200, 1481 through 1526, and 1551 through 1755. The proposed University Pilot Procurement Code provides added methods of competition and flexibility in the selection of methods to be used for the procurement of goods and services, establishes competitive thresholds, expands public notice, outlines exceptions to the competitive selection process, sets forth dispute resolution processes, establishes standards for integrity in procurements and provides a broad range of processes and procedures to be followed by LSU and those seeking and doing business with LSU.

Title 34
GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL
Part XIII. University Pilot Procurement Code
Chapter 3. Purpose, Applicability and Definitions
§301. Purpose and Legislative Authority

A. Goal. It is the goal of the university to procure goods and services in a manner that is open, fair, encourages competition, and affords vendors equal opportunities to compete.

B. Purpose. The purpose of this *University Pilot Procurement Code* is to establish parameters of a procurement program designed to support and facilitate the instructional, research and public service missions of the university by applying best methods and business practices to the procurement of goods and services and to structure other business arrangements by the university. This university pilot procurement code is intended to promote the development and use of procurement processes which promote the pursuit of excellence and the best interests of the university while maintaining the highest possible integrity, broad based competition, fair and equal treatment of the business community and increased economies and efficiencies for the university.

C. Communication. The university will communicate and collaborate with the division of administration, other state colleges and universities and other public entities when mutual benefit can be obtained.

D. Authority. This *University Pilot Procurement Code* is adopted in compliance with the Louisiana Administrative Procedure Act (R.S. 49:950-999.25) and pursuant to the Louisiana Granting Resources and Autonomy for Diplomas Act (R.S. 17:3139-3139.7 as amended by Act 749 of 2014) and administrative approval granted by the Joint Legislative Committee on the Budget.

E. Implementation. Implementation of the university pilot procurement code is subject to approval by the management board and shall be adopted in compliance with the Louisiana Administrative Procedure Act (R.S. 49:950-999.25) and pursuant to the Louisiana Granting Resources and Autonomy for Diplomas Act (R.S. 17:3139-3139.7. as amended by Act 749 of 2014) and administrative approval granted by the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§303. Applicability

A. Applicability. This university pilot procurement code, together with established management board policies, applies to the acquisition by the university of all goods and services paid with public funds, and shall, as authorized by R.S. 17:3139.5.5.c.i, be used in place of these Louisiana procurement laws: R.S. 39:15.3, R.S. 39:196 through R.S. 39:200, R.S. 39:1481 through R.S. 39:1526, and R.S. 39:1551 through R.S. 39:1755.

B. Revenue Producing Enterprises. This university pilot procurement code also applies to transactions with no expenditure of public funds where university facilities, personnel or services will be utilized for revenue producing enterprises with other individuals or entities that will generate income for the university, consistent with established management board policies.

C. Other Institutions. Other institutions under the same postsecondary education management board as the initial qualifying institution may utilize this pilot procurement code, provided the procurement is conducted under the auspices of a shared services model managed by the initial qualifying institution.

D. Revocation. If the university's autonomy to use this university pilot procurement code should be revoked by the Board of Regents or the Division of Administration pursuant to R.S. 17:3139.3 or R.S. 17:3139.5.6, the university shall end use of these pilot provisions in keeping with the revocation notice and shall resume procurements pursuant to applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§305. Definitions

Aggrieved Party—a person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the University Pilot Procurement Code and has or may have a pecuniary or other property interest in the award of the contract.

Anti-Competitive Practices—a practice among bidders or offerors which reduces or eliminates competition or restrains trade. An anti-competitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products.

Award—the acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a selected respondent.

Best and Final Offer (BAFO)—in a competitive negotiation, the final proposal submitted by a respondent after negotiations have been completed and which contains the respondent's most favorable terms in response to the solicitation.

CEO—the most senior administrator for the university system governed by the management board, also referred to as president.

Client Services—services provided directly to university clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

Chancellor—the chief administrative head of the institution of higher education, whether identified by this or some other title in the university's organization chart, also referred to as President.

Chief Financial Officer (CFO)—the most senior university executive responsible for financial controls for the university, whether identified by this or some other title in the university's organization chart. The CFO or designee has specified responsibilities under this university pilot procurement code.

Chief Procurement Officer (CPO)—as used in this university pilot procurement code is the director of procurement for the university and does not refer to the chief procurement officer for the State of Louisiana.

Collusion—see *anti-competitive practices*

Common or General Use Item—a specification which has been developed and approved for repeated use in procurements in accordance with the provisions of R.S. 39:1651 (A) and (B).

Competitive Negotiation—a step toward a contract involving back and forth communication regarding costs and other criteria between the evaluation team and respondents who have been found suitable for award of a contract pursuant to evaluation of responses to a solicitation.

Competitive Reverse Auction (CRA)—a competitive online solicitation process conducted for goods and/or services in which respondents compete against each other online, in real time, in an open and interactive environment.

Competitive Sealed Bidding—the receipt of bids protected from inspection prior to bid opening. Bids may be received in any manner specified in the solicitation for bids including receipt by mail, by direct delivery, or through any secure electronic interactive environment permitted by rule or regulation.

"Consultant—an independent individual or firm contracting with the university to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the university except as to the result of the work. The university monitors progress under the contract and authorizes payment.

Contract—all types of university agreements; sponsored agreements including but not limited to purchase orders, for the procurement or disposal of goods and services and the generation of revenue for the university by the use of university facilities, personnel or services; "contract" shall not include:

1. contracts or appointments for employment;
2. licensing of university's intellectual property specially regulated by the management board;
3. cooperative endeavor agreements.

Contract Controversy—a disagreement that may arise between the university and a contractor regarding the interpretation, application or breach of contract terms. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

Contract Modification—any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor—any individual or entity having a contract with the university.

Cooperative Buying Organization (CBO)—a public or private organization that offers goods or services to subscribing public or private procurement units from vendors located in the United States who have agreed to uniform terms, conditions and pricing in accordance with an agreement entered into by the participants pursuant to a competitive award process.

Cooperative Purchasing—procurement conducted by or on behalf of more than one public procurement unit or by a public procurement unit with an external procurement activity or by a private procurement unit.

Electronic Signature—an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Emergency Procurement—a purchase made after a written determination by the CPO that:

1. there exists an emergency condition which creates a threat to public health, welfare, safety, or public property, or conservation of public resources;
2. the emergency condition creates an immediate and serious need for goods or services that cannot be met through normal procurement methods;

Evaluation Team—a group of individuals designated to conduct interviews and negotiations during the evaluation of responses to a solicitation. The team members may be requested to provide scores for solicitations reviewed.

Firm, Fixed Price Contract—a contract where the total amount to be paid to the contractor is fixed and is not subject to adjustment by reason of the cost experience of the contractor. The term includes contracts where the unit price is set but the total price varies because actual quantities purchased deviate from the quantities estimated to be purchased. The term also includes contracts where the price may be adjusted in accordance with a contractually established price adjustment provision which is not based upon the contractor's costs.

General Services Administration (GSA) Contract Schedules—long-term government-wide contracts awarded by the U.S. General Services Administration to commercial entities to provide government procurement access to a broad spectrum of commercial goods and services at volume discount pricing.

Goods—all property, including but not limited to, equipment, materials, supplies, insurance, license agreements for software and leases on real property excluding a permanent interest in land, all consistent with established management board policies. Goods are not services.

Intergovernmental or *Interagency Contracts*—contracts or agreements in which each of the parties is a governmental entity or between subdivisions or institutions under their jurisdiction.

Invitation to Bid (ITB)— a solicitation, whether attached or incorporated by reference, utilized for soliciting bids to provide goods or services in accordance with this university pilot procurement code.

Items for Resale—goods or services purchased by the university for retail sale to students, employees or the public.

Lease of Facilities—contracts for the lease or rental of space by or for the university shall require the authorization of the CPO. A lease or rental of more than 5,000 square feet in a privately owned building shall be awarded by use of an ITB or RFP as determined by procurement policies and approved by the CPO. Amendment of a lease of facilities shall be made only after approval by the CPO.

Management Board—the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

Multi-Step Bids or Proposals—a solicitation involving two competitive steps, combining the elements of both competitive sealed bids and competitive sealed proposals. The first step may require the submission of technical and price proposals with only the technical proposal being evaluated and scored. The second step involves the consideration of price proposals of those firms that have achieved the highest technical scores.

Negotiation—conferring, discussing, or bargaining to reach agreement in business transactions on a potential procurement.

Office of State Purchasing Contracts—contracts entered into by the Louisiana Office of State Purchasing and made available to other Louisiana procurement units.

President—the most senior administrator for the university system governed by the management board, also referred to as CEO.

Procurement—the process by which the ownership or use of goods or services is acquired. Also includes all functions that pertain to the obtaining of goods and services, including but not limited to description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Policies—policies shall generally describe requirements for selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. Procurement policies may address other issues related to procurement and to revenue generating contracts.

Professional Services—work rendered by an independent contractor who has a professed knowledge of a particular aspect of learning or science and its practical application. A profession is a vocation founded on advanced specialized study and training which enables its practitioner to provide particular services.

Proprietary Specifications—a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

Protest—a written objection by a potential aggrieved party to a solicitation or award of contract, with the intention of receiving a remedial result. Protests must be filed in accordance with this University Pilot Procurement Code (UPPC).

Public Funds—legislatively appropriated funds, interagency transfers, statutory dedication, federal appropriations, self-generated funds, gifts and funds received by the university by grant or other method from governmental or private sources and which may be used to advance the missions of the university.

Request for Proposals (RFP)—a solicitation for proposals to supply services or a combination of services and goods where weighted criteria are the basis for award. An RFP may also be used for a solicitation for lease of facilities.

Request for Quotation (RFQ)—a solicitation for use in procurements that includes a description of the goods or services specified and requests that a potential vendor respond with price and other information by a designated time and date. Evaluation and recommendation for award are based on the quotation which offers the best price, quality, delivery and services from a respondent with a satisfactory record for performance and reliability.

Request for Quote and Qualifications (RFQQ)—a solicitation the university has identified the need and the services to resolve it and is looking for a firm's qualifications and costs or fees to provide the identified services

Respondent—an individual or entity that submits a response to a solicitation.

Responsible Respondent—a business entity or individual determined to be fully capable of meeting all requirements of the solicitation and subsequent contract and which has the personnel, financial and technical resources to perform as will be contractually required. A responsible respondent must be able to fully document in advance the ability to provide good faith performance.

Responsive Respondent—an individual or business entity that has submitted a bid/proposal/offer that fully conforms in all material respects to the requirements of the solicitation.

Services—the furnishing of labor, time or effort by a vendor which may involve, to a lesser degree, the delivery or supply of a product, incidental to the required performance.

Shared Service Model—the provision of a service or function by one part of an organization or group where that service or function had previously been found in more than one part of the organization or group. Funding and resourcing of the service is shared and the providing department effectively becomes an internal service provider.

Signature— a manual or electronic signature. See also *Electronic Signature*.

Small Purchases—Procurements not exceeding $5,000 or an amount as determined by the management board to be in the best interest of the university or to offset volatile economic conditions may be made in accordance with small purchase procedures, except that procurement requirements shall not be artificially divided so as to constitute a small purchase under this definition.

Sole Source Procurement—a purchase made when there is only one source for a good or service and only one vendor or supplier has the sole ability to meet the requirements of the procurement.

Solicitation—an ITB, RFP, RFQ, RFQQ, CRA, SFO or an electronic posting, document or any other communication used to obtain responses for the purpose of entering into a contract.

Solicitation for Offers (SFO)—a solicitation for a contract that will produce revenue or other significant benefit for the university.

University—Louisiana State University and Agricultural and Mechanical College, located at Baton Rouge and designated as the premier flagship university for the state, an institution of the Louisiana State University System and under the supervision and management of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

University Pilot Procurement Code (UPPC)—the rules adopted pursuant to the authority granted by R.S. 17:3139.5.5.c.i, for use by the initial qualifying institution and those institutions operating under the auspices of a shared services model managed by the qualifying institution, in lieu of state procurement statutes when the university procures goods or services or enters other contracts.

Used Equipment—pre-owned or rebuilt/remanufactured/ refurbished equipment that may be offered for purchase.

Vendor—a supplier or seller of goods or services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§307. Delegation and Revocation of Purchasing Authority to Departments

A. Supervision. The CPO shall supervise assistants and other personnel as may be necessary for the efficient operation of university procurement.

B. Delegation. For the efficient operation of the university the CPO may delegate, in writing with the approval of the CFO or designee, to university deans, directors, or department heads, or their formally designated agents, authority to procure on behalf of their administrative units in keeping with this UPPC.

C. Compliance. The CPO will ensure where delegation or authorization to university deans, directors, or department heads, or their formally designated agents, authority to procure on behalf of their administrative units, that the UPPC, procurement procedures and ethical practices are followed to effectively mitigate potential risks to the university.

D. Revocation. The CPO may change, limit, expand or reverse such delegations at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 5. Competitive Solicitations

§501. Types of Competitive Methods

A. Determination. The CPO shall determine the appropriate solicitation methods to be used in procuring goods and services for the university. Among those methods are:

1. invitation to bid (ITB);
2. request for proposals (RFP);
3. request for quotation (RFQ);
4. request for quote and qualifications (RFQQ);
5. competitive reverse auction (CRA);
6. best and final offer (BAFO);
7. solicitation for offers (SFO);
8. competitive negotiation;
9. cooperative buying organizations (CBO);
10. multi-step bids or proposals.

B. Other procurement methods. Other procurement methods may be utilized where there is a written determination by the CPO and the CFO or designee that it is in the best interest of university to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§503. Addenda Modifying Solicitations

A. Modifications to ITB or RFP. An addendum modifying an ITB or RFP shall not be issued during the 72 hours excluding Saturdays, Sundays, and holidays preceding the response submission deadline unless the time for submitting responses is extended for at least one week.

B. Modifications to RFQ or RFQQ. An addendum modifying a RFQ or RFQQ shall not be issued during the 24 hours excluding Saturdays, Sundays, and postal holidays

preceding the response submission deadline unless the time for submitting responses is extended for at least 24 hours.

C. Distribution of Addendum. Addendum(s) shall be sent to all prospective respondents known to have received a solicitation. Notification of addenda may also be made by posting on electronic bulletin boards, publication in appropriate newspapers and trade journals, email and postal notices to potential vendors, and by other means determined by the CPO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§505. Competitive Thresholds

A. Procurements. Single procurements of goods or services utilized within a twelve month period estimated to cost less than $50,000 shall be made using procedures determined by the CPO. Procurement of goods and services utilized within a 12 month period estimated to cost in excess of $50,000 or an amount as determined by the management board to be in the best interest of the university or to offset volatile economic conditions shall be made using the competitive methods set forth by the CPO unless exempt elsewhere in this UPPC.

B. Information Technology. Single procurements of information technology software, installation, license, modifications, integration, training, hosted software, software subscriptions, support, etc. and hardware/software maintenance estimated to cost less than $100,000 during a 12 month period shall be made using procedures determined by the CPO. Procurement of information technology software and hardware/software maintenance estimated to cost in excess of $100,000 or an amount as determined by the management board to be in the best interest of the university or to offset volatile economic conditions during a 12 month period shall be made using the competitive methods set forth by the CPO unless exempt elsewhere in this UPPC.

C. Professional Services. Procurements of professional services shall be made using procedures determined by the CPO. These include services that are rendered by an independent contractor who has a professed knowledge of some department of learning or science used in practical applications to the affairs of others or in the practice of an art founded on it, which independent contractors shall include and not be limited to lawyers, doctors, dentists, psychologists, advance practice nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, claims adjusters, pharmacists, visiting professors and scientists.

D. Specialty Services by Individuals. Procurement of services rendered by individuals which require the use of graphic artists, sculptors, musicians, entertainers, photographers, and writers or which require the use of highly technical or unique individual skills or talents, such as, but not limited to, paramedics, therapists, handwriting analysts, foreign representatives, expert speakers, trainers within a continuing education program and expert witnesses for adjudications or other court proceedings shall be made using procedures determined by the CPO.

E. Artificial Division. Under no circumstances may a procurement requirement be artificially divided so as to avoid the application of competitive thresholds under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§507. Procurement of Insurance and Related Services

A. Contracts for Insurance. Contracts entered into by the university for the purchase of insurance or for obtaining services related to the operation of an insurance program shall be awarded in accordance with the provisions of this UPPC. Determination of the appropriate competitive method shall be made by the CPO

B. The university shall contract for consulting services with one or more licensed insurance producers. Such contract(s) may authorize one or more producers to advise the university regarding the insurance program and to procure insurance on behalf of the university.

C. System-Wide Programs of Self-Insurance. Unless specifically authorized in advance, in writing, by the CEO or president for the university system governed by the management board, the provisions of this section shall not apply to any procurement related to any system-wide program of self-insurance or any other system-wide insurance or other employment benefit related programs.

D. Splitting of Commissions Prohibited. It shall be unlawful for an agent to split, pass on, or share with any person, group, organization, or other agent, except the university, all or any portion of the commission derived from the sale of insurance to the university; except that on policies involving properties or exposure in more than one geographic area of the state, said commission may be split, shared, or passed on if authorized in writing by the CPO. In any such instance where the sharing of a commission on university insurance is authorized, it shall be only with a bona fide insurance agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§509. Specifications

A. Nonrestrictive Specifications. Specifications shall be developed in a manner which is most likely to result in the broadest possible competition while securing quality goods and services which meet the needs and expectations of the university. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repairs items where two or more design, functional, or performance criteria will satisfactorily meet the university's requirements.

B. Proprietary Specifications. Proprietary specifications may be used only pursuant to the written approval of the CPO upon a determination that such use is in the best interest of the university.

C. Use of Existing Specification. If a specification for a common or general use item has been developed and adopted in accordance with university standards or a

qualified products list has been developed and adopted in accordance with university standards for a particular supply, service, or major repair item, or need, it shall be used unless the CPO makes a written determination that its use is not in the university's best interest.

D. Bid or Performance Guaranty. Solicitations may include requirements for bid and/or performance guaranty.

1. Bid Guaranty. When specified in the solicitation for bids or advertisement for bids, a bond or certified check, made payable to the university, in the amount and in accordance with the specifications in the solicitation for bids, must accompany each bid.

2. Performance Bond. When required, the successful bidder must furnish a satisfactory bond of a surety company licensed to do business in Louisiana with all fees current, made payable to the university in a sum equal to the amount and in accordance with the specifications in the solicitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§511. Public Notice for Procurements; Submission Deadline

A. Public Notification. Public notification of solicitations for bids/proposals/offers/auctions/quotations may be made through a centralized electronic interactive environment. The notice for each solicitation may contain the name, address, email address and telephone number of the university contact person from whom detailed information may be obtained, shall describe the goods or services sought, and shall designate the forms to be used and the date, time and place for the receipt of bids/proposals /offers/auctions/quotations.

B. Time for Reasonable Notification. Notification of a solicitation shall allow a reasonable time for responses given the nature and complexity of the solicitation. Notification of solicitations may also be made by posting on electronic bulletin boards, publication in appropriate newspapers and trade journals, email and postal notices to potential vendors, and by other means determined by the CPO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§515. Receipt and Recording of Responses

A. Receipt of Solicitation Response. Responses to solicitations shall be received in the manner specified including receipt by mail, direct delivery, or through any secure electronic interactive environment permitted pursuant to the Louisiana Uniform Electronic Transaction Act.

B. Designated Place of Response. A response received at the designated place after the submission deadline shall not be considered whether delayed in transmission or for any cause whatsoever. In no case will late responses be considered.

C. Response Time. Responses to solicitations must be received at the time and place and in the format prescribed in the solicitation.

D. Delay of Response. If a receipt of a response is delayed by action of the university and this delay prejudices a respondent, the university shall cancel and reissue the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§517. Bid Submission Authority for Sealed Bids

A. Evidence of agency, corporate, or partnership authority may be required for submission of a bid to the university based on the type and complexity of the solicitation. If so required, the authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met.

1. The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership or partnership in commendam listed in the most current partnership records on file with the secretary of state.

2. The signature on the bid is that of an authorized representative of the corporation, partnership, or other legal entity and the bid is accompanied by a corporate resolution, certification as to the corporate principal, or other documents indicating authority which are acceptable to the public entity.

3. The corporation, partnership, or other legal entity has filed in the appropriate records of the secretary of state in which the public entity is located, an affidavit, resolution, or other acknowledged or authentic document indicating the names of all parties authorized to submit bids for public contracts. Such document on file with the secretary of state shall remain in effect and shall be binding upon the principal until specifically rescinded and cancelled from the records of the respective offices.

B. Bids Binding. Unless otherwise specified all bids shall be binding for a minimum of 30 days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the university may award to this bidder after this period has expired or the period as specified in the bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§519. Mistakes in Responses

A. Errors in Responses. Patent errors in responses to solicitations supported by clear and convincing evidence may be corrected by the university or may be withdrawn, if such correction or withdrawal does not prejudice other respondents and such actions may be taken.

B. Minor Informalities. Minor informalities are a matter of form rather than substance which are evident from the solicitation documents or insignificant mistakes that can be waived or corrected without prejudice to other respondents. The CPO may waive such informalities or allow the respondent to correct them depending on which is in the best interest of the university.

C. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid may be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. When an error is made in extending total prices, the unit bid price will govern. Under no circumstances will a unit bid price be altered or corrected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§521. Cancellation of Solicitations

A. Cancellation of Solicitation. A solicitation may be cancelled, prior to execution of a contract, by the CPO at any time when it is deemed in the best interest of the university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§523. Withdrawal of Bids or Proposals

A. Withdrawal of Bid or Proposal. A bid or proposal which contains a patently obvious, unintentional and substantial mechanical, clerical or mathematical error or unintentionally omits a substantial quantity of goods or services called for in the solicitation may be withdrawn by the respondent if clear and convincing sworn, written evidence of such error or omission is furnished to the university prior to award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§525. Exceptions to the Competitive Solicitation Process

A. Exceptions. Exceptions to the competitive solicitation processes, when deemed in the best interest of the university, as the following, but not limited to:

1. equipment or vehicle repairs and repair parts from an authorized dealer or original equipment manufacturer;
2. equipment moves by the original equipment manufacturer or authorized dealer to ensure equipment operation to original equipment manufacturer specifications, calibration, warranty, etc.;
3. vehicle body repairs covered by insurance recovery and in accordance with insurance requirements;
4. livestock procured at public auction;
5. livestock sperm and ova;
6. working class animals trained to perform special tasks, including, but not limited to, narcotics detection, bomb detection, arson investigation and rescue techniques;
7. publications and/or copyrighted materials procured directly from the publisher or copyright holder;
8. publications and/or copyrighted materials procured by libraries or text rental stores from either subscription services or wholesale dealers which distribute for publishers and/or copyright holders;
9. publications of articles, manuscripts, etc. in professional scientific, research, or educational journals/media and/or the procurement of reprints;
10. royalties and license fees for use rights to intellectual property, such as, but not limited to: patents, trademarks, service marks, copyrights, music, artistic works, trade secrets, industrial designs, domain names, etc.;
11. public utilities and services provided by local governments;
12. prosthetic devices, implantable devices and devices for physical restoration;
13. educational training and related resources used to enhance the performance of university employees and good standing of state agencies, including memberships in and accreditations by professional societies and organizations;
14. materials, supplies, exhibitor fees and exhibit booths for conferences, seminars and workshops or similar events (business, educational, promotional activities) which enhance economic development or further the university's mission, duties and/or functions, with the approval of the CPO or equivalent;
15. food, material and supplies for teaching and training where procuring, preparing and serving of food are part of the prescribed course;
16. shipping charges and associated overseas screening and broker fees between international and domestic origins and destinations;
17. parcel services, including but not limited to Federal Express, United Parcel services, Airborne Express and Express Mail;
18. advertising where the CPO certifies that specific media is required to reach target audiences;
19. scientific and laboratory supplies, equipment and services for scientific research when procured by the university for laboratory, educational or scientific research; not to exceed $50,000 per transaction;
20. procurement or rental of mailing lists;
21. art exhibitions, rentals and/or loan agreements and associated costs of curatorial fees, transportation and installation;
22. instructors for continuing education courses taught on an as-needed basis;
23. procurement of services from subcontractors named in federal, state and private sponsored agreements when the grant award is received in which a portion of the services is subcontracted;
24. services paid for with federal funds provided specifically for such purposes;
25. used equipment and antique procurements;
26. Office of State Purchasing contracts or state master agreements;
27. procurements from GSA contract schedules;
28. intergovernmental or interagency contracts;
29. procurement of items for resale;
30. renewal of document storage facilities;
31. dues, registrations and membership fees;
32. analysis of research specimens necessary to preserve continuity of science;
33. goods or services purchased in foreign countries;

34. contracts for employee benefit plans as authorized by law;

35. client services;

36. procurements not exceeding the amounts established by the management board may be made in accordance with small purchase procedures, except that procurement requirements shall not be artificially divided so as to constitute a small purchase;

37. web based or subscription services;

38. services provided by expert witnesses;

39. renewal of termite service contracts.

B. Emergency Procurements. Emergency procurements shall be made using the most competitive process available consistent with the need for responding to the emergency. Reasonable efforts under the circumstances shall be made to obtain quotations from three or more vendors when goods or services are to be purchased on an emergency basis. Emergency procurement shall be limited to only those goods and services necessary to meet the emergency.

C. Cooperative Purchasing Agreements

1. The CPO may approve a single purchase or approve ongoing participation in a cooperative purchasing agreement as a University-wide price agreement. The CPO has the final authority to approve the university's participation in cooperative purchasing agreements.

2. If it is in the best interests of the university after considering:

a. the competitiveness of pricing under the contract;

b. the competitiveness of the solicitation and award process;

c. the efficiencies and cost savings of using the contract;

3. The university may participate in, conduct, sponsor or administer a cooperative purchasing agreement.

4. A report of all group purchasing or cooperative purchasing contracts by each institution authorized under these provisions shall be provided to the Joint Legislative Committee on the Budget no later than 90 days after the end of each fiscal year. Such report shall, at a minimum, include a measurement of the savings derived from the utilization of the group purchasing or cooperative purchasing process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 6. Reverse Auctions

§603. Application

A. Where the university utilizes the reverse auction process on behalf of a single institution, the CPO shall:

1. Determine it is in the best interest of the university to use electronic online bidding;

2. Determine specifications and terms and conditions for the procurement.

B. When applicable, prequalified products for a particular solicitation shall be announced seven days prior to the beginning of the auction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§605. Addenda Modifying a Reverse Auction

A. It is the responsibility of the bidder to obtain any solicitation amendment(s) if the solicitation and addenda are posted on an electronic internet-based system for posting bid opportunities.

B. An addendum modifying a reverse auction shall not be issued during the 72 hours excluding Saturdays, Sundays, and postal holidays preceding the opening date and time unless the opening date and time is extended for at least one week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§615. Public Viewing of Auction Event

A. The public may view the internet auction event which will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 7. Veterans and Small Entrepreneurships

§701. Initiatives for Veterans and Small Entrepreneurships

A. Hudson and Veterans' Initiatives. Procurement procedures shall establish the means for implementation of the Hudson and Veterans' Initiatives as required by R.S. 39:2001-2008 and R.S. 39:2171-2179 respectively. Whenever deemed by the CPO as in the best interests of the university, solicitations may include reserved points potential respondents certified as small and emerging business (RS 51:941), or a small entrepreneurship (RS 39:2006) or a veteran or service-connected disabled veteran-owned small entrepreneurship (RS 39:21)

B. The CPO may waive the requirement of obtaining three or more Quotes when purchases do not exceed $50,000 per transaction from a small entrepreneurship certified under either the Hudson or Veteran Initiative when price is determined to be reasonable, in their sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 9. Revenue Generating Solicitations and Contracts

§901. Revenue Generating Contracts

A. Solicitations. Contracts or franchises by the university which will generate income or other significant benefit for the university and which will result in an exclusive right for the contracting party to provide goods or services, using university facilities, personnel or services shall be awarded by the use of an open competitive process which is approved by the CPO and the CFO or designee and consistent with

management board policies. Such competitive process shall allow reasonable time for potential respondents to prepare responses given the nature and complexity of the responses solicited.

B. Exception to Competition. When it is determined by the CPO, with the written concurrence of the CFO or designee, consistent with established management board policies, that circumstances support the award of a revenue generating contract without competition, such a contract may be entered. Contracts by which services produced by the university are made available to entities outside the university need not be competitively awarded but shall be made on a basis that assures the recovery of costs associated with providing those services and a reasonable return to the university. Such contracts shall be structured in a manner which enhances opportunities for instruction, research, public service and other objectives of the university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 11. Contracts with University or State Employees

§1103. Contracts with University or State Employees

A. Faculty of Other Universities. Contracts between the issuing university and a faculty member of any other university shall be subject to the policies and procedures promulgated by each respective university and the management boards having authority over the respective institution of higher education where the faculty member is employed. Such agreement shall be subject to the written approval of the chancellor of the university which employs the faculty member, and written notification of the agreement and approval shall be provided to the appropriate management board.

B. Faculty or Staff of the University. Contracts between university and any of its own employees, or between university and any other employee of the State of Louisiana or any of its political subdivisions, shall be consistent with the Louisiana Code of Governmental Ethics, the Code of Ethics for procurement as defined in LAC 34:XIII.Chapter 23, Civil Service rules, other applicable laws and regulations, and established management board policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 13. Evaluation and Award of Competitive Solicitations

§1302. Evaluation and Award

A. Responses. Responses to solicitations shall be evaluated in keeping with the criteria, specifications, terms and conditions set forth in the solicitation.

B. Lowest Cost. Unless otherwise specified in the solicitation an award based on a solicitation shall be to the responsible respondent whose bid is responsive to the terms, conditions and specifications and which offers the lowest cost to the university.

C. Highest Score. An award based upon a RFP shall be to the responsible respondent whose proposal was scored highest by an evaluation team based on the weighted criteria set forth in the RFP after completion of all steps of the evaluation process set forth in the RFP, taking into consideration price and the evaluation factors set forth in the RFP.

D. Greatest Return. The award based on a SFO which results in an exclusive right or franchise for the use of university facilities or services shall be made to the respondent that meets the terms and conditions of the solicitation and offers the greatest return to the university.

E. Notice. Written notice of the award of a contract shall be provided to all respondents requesting such notice and shall be made a part of the procurement file.

F. Tie Bids. Tie bids occur when responsive bids from responsible respondents are identical in price and meet all requirements and criteria set forth in the solicitation and are susceptible of award. When there is a tie between an out-of-state and Louisiana respondent, preference will be given to the Louisiana respondent. The CPO shall make an award when tie bids are received in any manner that will discourage tie bids. A written determination justifying the manner of award must be made.

G. Subsequent Award. In the event any contractor fails to fulfill or comply with the terms of any contract, the CPO may award the contract to the next lowest responsible respondent to the solicitation which resulted in the contract, subject to acceptance by that respondent, and may hold the defaulting contractor responsible for the difference in cost.

H. Independent Price Determination. Every solicitation shall provide that by submitting a bid or offer, the respondent certifies that the price submitted was independently arrived at without collusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§1305. Right to Reject

A. Rejection. The university reserves the right to reject any or all responses to a solicitation in whole or in part and to award by items, parts of items or by any group of items specified. Also, the right is reserved to waive any technical defects when the best interest of the university will be served.

B. The university reserves the right to reject any or all responses to a solicitation from respondents that are an entity, or are principal individuals within an entity, which has been convicted of a felony or any misdemeanor involving moral turpitude.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§1307. Responsibility of Bidders and Proposers

A. A reasonable inquiry to determine the responsibility of a bidder or proposer may be conducted. The unreasonable failure of a bidder or proposer promptly to supply

information in connection with such an inquiry may be grounds for a determination of non-responsibility with respect to such bidder or proposer.

B. Whenever the CPO proposes to disqualify the lowest bidder, the university shall:

1. give written notice of the proposed disqualification to such bidder and include all reasons for the proposed disqualification;

2. give such bidder who is proposed to be disqualified, a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

C. Except as otherwise provided by law, information furnished by a proposer pursuant to this Section may not be disclosed outside of the university without prior written consent of notice to the proposer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 15. Disputes and Contract Controversies

§1503. Dispute Resolution

A. Authority of CPO. The CPO is authorized to resolve protests and contract controversies. Detailed procedures will be regarding calculation of deadline dates, methods of transmitting protests and contract controversies, and similar administrative matters.

B. Protests

1. All protests to a solicitation shall be filed in writing with the CPO no later than three days prior to the response submission deadline, excluding Saturdays, Sundays, and postal holidays. All protests to the award of a contract shall be filed with the CPO no later than seven days after the issuance of the notification of award.

2. The CPO shall render a written decision regarding a protest within 14 days, excluding Saturdays, Sundays, and postal holidays after receipt of the protest and any subsequently submitted information. A written decision shall be furnished to the aggrieved party and other interested parties.

3. In the event of a timely protest relating to a solicitation or the award of a contract, university shall not proceed with the solicitation or the award of a contract unless the CPO makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the university.

4. Protest Bonds. Bonds may be required, and must have been included in the solicitation, when the university determines that the harm from delay of implementation of a contract could adversely affect the operations of the university.

C. Contract Controversies

1. All contract controversies shall be filed with the CPO no later than seven days after either the termination of the contract or the event giving rise to the controversy, whichever is later.

2. The CPO shall render a written decision regarding a contract controversy within seven days, excluding Saturdays, Sundays and postal holidays. After all parties to the controversy have had a reasonable opportunity to state in writing their position on the issues involved and their responses to the positions of other parties to the controversy, a written decision shall be furnished to the contractor.

D. Hearing. If the CPO determines that the issues involved in a protest or contract controversy are complex, obscure or would best be evaluated based on the testimony of the parties or others, the CPO may extend the relevant time periods or call for a hearing at which evidence may be received, a record created and a decision rendered by an independent hearing officer designated by the CPO. All interested parties shall be allowed to fully participate in such a hearing.

E. Decision of CPO. A decision of the CPO or a designated hearing officer regarding a protest or a contract controversy is final and conclusive except when:

1. the person or entity adversely affected has filed an appeal as provided in this Section.

F. Appeal. Any person or entity aggrieved by the decision of the CPO or hearing officer regarding a protest or a contract controversy may appeal the decision to the CFO or designee within seven days of receipt of the written decision. Review by the CFO or designee of the decision of the CPO or hearing officer shall be based on documents submitted by the CPO and the person or entity aggrieved by the decision or, if a hearing was conducted, upon the record created from the hearing.

G. Final Administrative Determination. The decision of the CFO or designee regarding an appeal brought under LAC 34:XIII.1503.F may not be appealed. The decision of the CEO or designee shall constitute the final administrative determination regarding the protest or contract controversy.

H. Judicial Review. Any person or entity adversely affected by the final administrative determination regarding a protest or contract controversy may seek judicial review of the administrative determination in the Nineteenth Judicial District Court in East Baton Rouge Parish, which review shall be based on the record complied at the administrative level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§1507. Damages

A. Protest Damages. The CPO, or designee, any hearing officer, and any court properly hearing any matter arising out of any protest may award damages to the aggrieved party when the protest brought by such aggrieved party is sustained and the aggrieved party should have been awarded the contract but was not. Such damages shall be limited exclusively to reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

B. Contract Damages. The CPO, or designee, any hearing officer, and any court properly hearing any matter arising out of any contract controversy may award damages to the contractor when the contract controversy brought by such contractor is sustained. Such damages shall be limited exclusively to the actual expenses reasonably incurred in performance of the contract.

C. Administrative Costs. Any administrative determination of costs or expenses recoverable pursuant to this section shall be final, subject to the discretionary review of the management board.

D. Limitations. In no event shall damages awarded by the CPO, or designee, any hearing officer, the CEO, or designee, or any court include attorney fees or any incidental, indirect, special, or consequential damages, including but not limited to loss of use, revenue or profit, whether reasonably certain or not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 16. Inspection and Audit of Records

§1601. Right to inspect

A. The university may, at reasonable times, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§1603. Right to Audit Records

A. Audit of persons submitting cost or pricing data. The university may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data.

B. Contract Audit. The university shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five years from the date of final payment under the prime contract and by the subcontractor for a period of five years from the date of final payment under the subcontract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 17. Judicial Review of Administrative Determinations

§1702. Venue for Actions by or against the University in Connection with Procurement

A. Solicitation and Award of Contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Such actions shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief.

B. Debarment or Suspension. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a person who is subject to suspension or debarment proceedings, to determine whether the debarment or suspension is in accordance with the constitution, statutes, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief.

C. Actions under Contracts or for Breach of Contract. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a contractor who contracts with the university, for any cause of action which arises under or by virtue of the contract, whether the action is on the contract or for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief.

D. Finality for Administrative Determinations. In any judicial action under this section, factual or legal determinations by employees, agents, or other persons appointed by the university shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law. Administrative decisions will be made pursuant to LAC 34:XIII.Chapter 15 and LAC 34:XIII.Chapter 21 unless the decision is fraudulent or the person or entity adversely affected by the decision has timely appealed administratively or judicially.

E. Writs or appeals; district court decisions. Any party aggrieved by a final judgment or interlocutory order or ruling of the Nineteenth Judicial District Court may appeal or seek review thereof, as the case may be, to the Court of Appeal, First Circuit, or the Supreme Court of Louisiana, as otherwise permitted in civil cases by law and the constitution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 19. Contracts

§1902. Contract Clauses; Administration

A. Required Contract Clauses. Clauses providing for the following requirements may be included in contracts, except upon a written determination by the CPO, approved in writing by the CFO or designee that the interests of university are best served by omitting the clause. The interest of the university that may include the following:

1. termination of the contract for default;
2. the right to audit records related to the procurement;
3. the right to suspend or terminate a contract based on the absence of budgeted funds for the acquisition of goods or services;
4. prohibiting illegal discrimination by the contractor;
5. requiring that Louisiana law shall apply to all disputes, and that venue for any actions brought against university arising out of the contract shall be only in the Nineteenth Judicial District Court in East Baton Rouge Parish.
6. liquidated damages as appropriate;
7. specified reasons for delay or nonperformance;
8. termination of the contract in whole or in part for the convenience of the university;

9. for cost reimbursement-based contracts, an itemized budget;

10. a description of reports or other deliverables to be received, when applicable;

11. a schedule when reports or other deliverables are to be received, when applicable;

12. responsibility for payment of taxes, when applicable;

13. assignability of the contract or rights to payments under the contract;

14. indemnification;

15. payment terms in accordance to R.S. 13:4202(B) for the applicable time period.

B. Contract Clauses. May permit or require the inclusion of clauses providing for appropriate equitable adjustments in prices, time for performance, or other contract provisions.

C. Documentation. If it is determined by the university that additional evidence of the validity of a claim for payment is required, such evidence shall be requested within 10 days, excluding Saturdays, Sundays and postal holidays from the receipt of the bill. In instances where additional evidence is required, the bill shall be reviewed and payment or rejection made within 30 days from receipt of the evidence requested by the university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§1904. Participation by Respondent Constitutes Consent

A. Express Consent. Participation by a respondent in any procurement process governed by this UPPC shall constitute express consent to the procedures, limitations, and other terms and conditions contained in this UPPC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§1906. Multiyear Contracts

A. Term. Except as otherwise provided in this section, no contract for goods or services may be entered into for periods of more than ten years. Payment and performance obligations for fiscal years after the initial year shall be subject to the availability and appropriation of funds therefor. No contract shall be entered into for more than one year unless the length of the contract was clearly stated in the specifications included in the solicitation. With respect to all multiyear contracts, there shall be no provisions for a penalty to the university for the cancellation or early payment of the contract.

B. Sponsored Agreements or Joint Agreements. Contracts or amendments to existing or future agreements or amendments issued under the authority of sponsored agreements or joint agreements between the Board of Regents and federal agencies for research, educational, or infrastructure development activities, and contracts or amendments to existing contracts issued by university under the authority of sponsored agreements or joint agreements issued by federal agencies or private sponsored agreements, may be entered into for a period corresponding to the performance period of the contract or agreement.

C. Capital Investments/Gifts. A nonexclusive contract with a vendor who has made a gift to the university of equipment utilized for promoting products and university activities at a substantial cost to the vendor, and which covers products for resale within the institution, may be entered into for a period not to exceed 10 years.

D. Term of Revenue Generating Contracts. Nothing in this Section shall limit the term of revenue generating contracts.

E. Exceptions. Notwithstanding the limitations set forth in this section, contracts of any type may be entered into for a longer term upon the express authorization of the management board, based on the written recommendation of the CPO and the chancellor that:

1. estimated, requirements cover the period of the contract and are reasonably firm and continuing; and

2. such a contract will serve the best interests of the university by encouraging effective competition or otherwise promoting economies in university procurement, which recommendation shall also state the estimated savings to be obtained by entering into a multiyear contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 21. Respondent and Contractor Relations

§2103. Contractor Communications

A. Registry. The business must be registered with the Louisiana Secretary of State's office.

B. Product Demonstrations. Potential respondents seeking to provide product demonstrations, presentations or exhibits to university personnel shall first request authorization to do so in writing to the CPO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§2105. Suspension Pending Debarment Investigation

A. Suspension. The CPO may issue a written determination to suspend a person or entity from doing business with the university pending an investigation to determine whether cause exists for debarment pursuant to University Pilot Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

§2107. Debarment

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CPO shall have authority to debar a person from consideration for the award of contracts. The decision to debar shall be based upon substantial evidence that a cause for debarment or suspension under subsection B has occurred. In making the decision of whether to debar a person, the CPO shall take into consideration the seriousness

of any violation and any mitigating factors. The CPO may suspend a person from consideration for an award of contracts for a period of up to three months if there is probable cause for debarment.

B. Causes. A person or entity may be debarred from further participation in contracts with the university on any of the following grounds:

1. conviction of the person or entity, or any of its officers, directors, principals, or key employees, of a criminal offense related to obtaining or attempting to obtain a contract with the university or the performance of a contract with the university;

2. conviction of the person or entity, or any of its officers, directors, principals, or key employees, of a criminal offense related to fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property, or any other offense involving moral turpitude;

3. conviction, or a civil finding of liability, of the person or entity or any of its officers, directors, principals, or key employees, of an offense under antitrust statutes of the United States, Louisiana, or any other state, for activities arising out of the submission of bids or proposals;

4. failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a repeated failure to perform or of unsatisfactory performance of one or more contracts;

5. the person or entity is currently under debarment by any other government entity based upon a settlement, agreement or a final administrative or judicial determination issued by a federal, state or local governmental entity;

6. violation of any federal or state law regulating campaign contributions;

7. violations of any federal or state environmental law;

8. violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations;

9. violation of the Workers' Compensation Act;

10. violation of any federal or state law prohibiting discrimination in employment;

11. three or more occurrences where a person has been declared ineligible for a contract;

12. unsatisfactory performance, including, but not limited to, any of the following:

a. failure to comply with terms of a state or university contract or subcontract, including, but not limited to: willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform or unsatisfactory performance of one or more contracts;

b. failure to complete the work in the time frame specified in the contract;

c. being declared in default on prior work or project;

d. failure to submit documents, information or forms as required by contract;

e. making false statements or failing to provide information or otherwise to cooperate with the university, contracting agency, or other state authorities;

f. discrimination in violation of laws or regulations in the conduct of business as a contractor;

13. any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a person as determined by the purchasing agency.

C. Hearing. When the CPO determines that a person or entity may have engaged in activities which are cause for debarment, a hearing shall be conducted by an independent hearing officer, designated by the CPO, in which evidence is received and a record created. The hearing officer shall issue a decision, including findings of fact and conclusions, based on the evidence produced in the hearing.

D. Effect. If the decision is to debar, the decision shall state the debarment period and inform the person or entity that no person representing the debarred person or entity during the debarment period may conduct business with the university and that any response to a solicitation received from the debarred person or entity during the debarment period will not be considered.

E. Administrative Review. A decision by the hearing officer to debar a person or entity may be appealed to the CFO or designee within seven days of receipt of the written decision on debarment. The CFO's review shall be based on the record created from the hearing.

F. Appeal. The decision of the CFO or designee may be appealed within seven days, excluding Saturdays, Sundays and postal holidays, after receipt of the decision of the CFO or designee to the chancellor. The decision of the chancellor shall constitute the final administrative determination regarding the debarment. The person or entity debarred may seek judicial review of the administrative determination in pursuant to the provisions of LAC 34: XIII. Chapter 15, which review shall be based on the record compiled at the administrative level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 23. Ethics

§2303. Integrity in Procurements

A. *Code of Ethics* and Ex Parte Communications. All parties involved in the procurement process, contract administration or contract performance are bound to act responsibly, fairly and in good faith. Any person acting for the university in the procurement process shall be held to the highest degree of integrity, honesty and trust and shall be bound by the *Louisiana Code of Governmental Ethics*, R.S. 49:1101 and the *Code of Ethics* for procurement which are in addition to applicable state laws, as follows.

1. Give first consideration to the mission and policies of the university and the laws of the State of Louisiana.

2. Strive to obtain maximum value for each dollar spent.

3. Decline all personal gifts or gratuities.

4. Grant equal consideration to all competitive suppliers.

5. Believe in the dignity and worth of the service rendered by the Procurement Office, and the responsibilities assumed as trusted public servants.

6. Conduct business with potential and current suppliers in good faith, devoid of intentional misrepresentation.

7. Demand honesty in sales representation whether offered through the medium of a verbal, electronic or written statement, an advertisement, or a sample of the product.

8. Receive the consent of originators of proprietary ideas and designs before using them for competitive purchasing purposes.

9. Make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier; and/or be willing to resolve major controversies, pursuant to the established policies of the university.

10. Accord a prompt and courteous reception to all who call on legitimate business missions.

11. Cooperate with trade, industrial and professional associations, and with governmental and private agencies for the purposes of promoting and developing sound business methods.

12. Foster fair, ethical and legal trade practices.

13. Identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved.

14. Resist encroachment on control of personnel in order to preserve integrity as procurement professional. Seek or dispense no personal favors.

15. Handle each procurement problem objectively and empathetically, without discrimination.

16. Support the professional aims and objectives of the National Institute of Governmental Purchasing, Inc. and the National Association of Educational Procurement.

B. Procurement procedures shall provide for restrictions on ex parte communications which are appropriate to the circumstances.

C. Conflicts of Interest. In addition to the limitations of Paragraph A of this section, If the CPO has reason to believe that a conflict of interest may exist for university procurement or contract administration personnel, the CPO shall direct the parties involved to take appropriate steps to eliminate an actual, perceived, or potential conflict of interest and shall monitor compliance with these steps.

D. Collusion. When collusion is suspected among respondents to a solicitation, a written notice of the relevant facts shall be transmitted to the district attorney for the parish in which university is domiciled, the attorney general and the inspector general for investigation. All documents involved in any procurement in which collusion is suspected shall be retained for a minimum of six years or until the district attorney for the parish in which university is domiciled, the attorney general and inspector general give written notice that they may be destroyed, whichever period is longer. All retained documents shall be made available to the district attorney for the parish in which university is domiciled, the attorney general and inspector general or their designees upon request.

E. Limitations on Consultants Competing for Contracts. Any person or entity, and any parent or subsidiary business entity of any entity contracting with university for the purposes of developing an ITB, RFP, or any other type of solicitation related to a specific procurement shall be prohibited from bidding, proposing, or otherwise competing for award of that procurement. Such persons or entities shall also be prohibited from participating as subcontractors related to performance of a contract resulting from that procurement. For purposes of this Section, the following activities shall not be considered developing an ITB, RFP, or any other type of solicitation:

1. architectural and engineering programming;
2. master planning;
3. budgeting;
4. feasibility analysis;
5. constructability review;
6. furnishing specification data or other product information;
7. any other services that do not establish selection qualifications or evaluation criteria for the procurement of an architect or engineer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Chapter 25. Management Board Authority

§2503. Management Board Policies Not Superseded

A. Special Policies and Provisions of Management Board. Nothing in this UPPC shall abridge any policies and provisions established by a management board, through its bylaws or regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:

Family Impact Statement

The provisions of this proposed Rule will have no known impact on family formation, stability or autonomy as described in R.S. 49:972.

Poverty Impact Statement

The provisions of this proposed Rule will have no known impact on child, individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

The provisions of this proposed Rule will have no known impact on staffing level, direct or indirect cost, or overall ability, as described in R.S. 49:953(a)(1).

Public Comments

Interested parties may contact Sally McKechnie, Director of Procurement and Property Management for LSU by email at purchasing@lsu.edu for further information. All interested parties are invited to submit written data, views, comments or arguments related to these proposed rules through Friday, November 21, 2014 to the above email address or to 213 Thomas Boyd Hall, LSU, Baton Rouge, LA 70803. No preamble has been prepared for this proposed Rule. Interested parties are urged to review the full text of the proposed University Pilot Procurement Code, a downloadable version of which is available on the LSU purchasing website: www. fas.lsu.edu/purchasing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Tuesday, November 25, 2014 at 9:30 a.m. in Room 329, LSU Capital Chamber, LSU Student Union, 310 Student

Union, Baton Rouge, LA 70803. 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.

Sally McKechnie
Director of Procurement and
Property Management

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: University Pilot Procurement Code

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

Pursuant to Louisiana Revised Statutes 17: 3139.5(5)(c)(i) which allows the implementation of a pilot procurement code the proposed administrative rules may result in an overall net decrease in university expenditures depending upon the costs associated with implementation and the increased competitiveness of solicitations. The pilot procurement code allows LSU to improve operational efficiency and effectiveness. It reduces the redundancy and inefficiency of multiple levels of bureaucratic reviews and approvals. It provides for multiple solicitation methods chosen specifically to increase competition and the use of cooperative purchasing agreements that have been competitively awarded by not-for-profit cooperative buying organizations. Cooperative purchasing agreements will allow the use of catalogs for small dollar item purchases that can be compared through electronic catalogs thus allowing a second level of competition from dollar I. Many such purchases are now made at retail prices without competition. The bids/proposals/offers are expected to result in substantial savings by receiving lower prices through the comparison of prices available in a broader marketplace. Other states that have adopted pilot procurement codes specifically for higher education have realized savings through the establishment of best practices and policies in the area of procurement. While the savings will be difficult to measure depending on the solicitation method, good/service purchased and the strategic decisions resulting from analysis of spending patterns, flagship institutions such as the University of Virginia, Colorado, Kansas and Oregon report success. We do not anticipate additional personnel or equipment to implement the pilot procurement code.

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

There should be no 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)

There is no anticipated impact on businesses due to the implementation of the pilot procurement code. The code will continue to award contracts on a competitive basis and all businesses will be encouraged to continue to participate in all solicitation events.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rules may increase competition among various businesses providing commodities and services to the university. To the extent businesses choose to participate in competitive solicitations, competition will likely increase among those businesses that provide the lowest price for the best goods or services.

Sally A. McKechnie
Director
1410#050

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources
Office of Coastal Management

Fisherman's Gear Compensation Fund (LAC 43:I.1509)

Under the authority of R.S. 49:214.21-49:214.42 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:450 et seq., the Department of Natural Resources, Office of Coastal Management proposes to amend LAC 43:I.1509 relative to the administration of the Fisherman's Gear Compensation Fund.

The Rule change better defines the required claim documentation and is a change to one of several claim denial criteria. The change of the denial criteria is in regards to proof of ownership documents of damaged equipment/gear and method of payment (i.e., cash paid receipts) and it removes the current practice of denying claims for equipment that was paid by cash since cash receipts from bona fide business will now be accepted as an eligibility component. This action is not required by federal regulation.

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary
Subpart 1. General
Chapter 15. Administration of the Fisherman's Gear Compensation Fund
§1509. Claims—General Form and Content

A. - A.5.a. …

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include: paid receipts which are completely filled out including the date, full name, address and telephone of the seller along with the claimant's name and/or address together with proof of payment such as copies of money orders or bank cashier's checks for the gear; affidavits; or other evidence. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule except for receipts from bona fide businesses in possession of a commercial or business permit/license, which was in effect at the time of the sale or repair, or a notarized affidavit from a business owner or chief executive officer of the business supporting the validity of the sale or repair. Claimants that made or repaired the damaged gear shall submit a notarized statement that he or she made his or her own gear along with paid receipts for the materials. If all damaged gear was original to the vessel when it was purchased or acquired, a copy of the bill of sale of the boat or subsequent notarized statement to the effect that all gear was original to the boat including date vessel was acquired, full name of seller, and sale price must be included;

A.5.c. - D. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.3.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21:957 (September 1995), amended by the Office of Coastal Management, LR 41:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This proposed Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

In accordance with R.S. 49:965.6, the Department of Natural Resources Office of Coastal Management has conducted a Regulatory Flexibility Analysis and found that the proposed amendment of this Rule will have negligible impact on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed Rule has no effect on the staffing level requirements or qualifications required to provide the same level of service.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed Rule has no total direct and no total indirect effect on the cost to the provider to provide the same level of service.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed Rule has no overall effect on the ability of the provider to provide the same level of service.

Public Comment

All interested persons are invited to submit written comments on the proposed regulation amendment. Persons commenting should reference this proposed regulation by "Administration of the Fisherman's Gear Compensation Fund." Such comments must be received no later than November 10, 2014, at 4:30 p.m., and should be sent to Jessica Diez, Coastal Resource Scientist, Office of Coastal Management P.O. Box 44487, Baton Rouge, LA 70804-4487 or by email to jessica.diez@la.gov. Copies of this proposed regulation can be purchased by contacting OCM at (225) 342-7360, and are available for viewing and copying on the internet at: http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5.

Public Hearing

Requests for a public hearing must be received by 4:30 p.m. November 10, 2014. If determined a public hearing is warranted, the public hearing will be held on November 25, 2014 from 10 a.m. to 12 p.m. in the Griffon Room of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802, so that interested persons may submit oral comments on the proposed amendments.

Keith Lovell
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Fisherman's Gear Compensation Fund

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

The proposed rule amendment will not increase expenses. The change, while allowing a previously excluded class of reimbursable claims, will not result in a measureable increase in overall claims paid and the percentage represented by the proposed change will be within the usual fluctuation of the percentage of rejected claims. The rule amendment better defines the required claim documentation and is a change to one of the several claim denial criteria. The proposed rule amendment will not increase workload or paperwork as the claims will still be processed in the same manner as before. There is no anticipated direct material effect on local governmental expenditures as a result of the proposed rule change. The intent of the change is to remove programmatic discrimination against the use of legal U.S. currency in the course of doing business.

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

There is no anticipated effect on revenue collections of state or local governmental units resulting from the proposed rule change.

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

The proposed rule will have no measurable cost or benefit to directly affected persons or non-governmental groups. While a positive economic benefit may be realized by a statistically insignificant number of directly affected persons (claimants) through the payment of claims that were previously denied, the change will be absorbed within the usual fluctuation of claims paid, resulting in no net change. There were only nine (9) claims that were denied due to claimants attempting to use documentation that would be permitted with the proposed rule, and of those nine, at least five (5) would have been disallowed for various other reasons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this proposed rule change.

Keith Lovell
Assistant Secretary
1410#031

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources
Office of Conservation

Plug and Abandonment of Oil and Gas Wells,
Financial Security, Utility Review Status
(LAC 43:XIX.Chapter 1)

The Department of Natural Resources, Office of Conservation proposes to amend LAC 43: XIX.Subpart 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The proposed amendment is made to implement recommendations of the Legislative Auditor in the performance audit issued May 28, 2014. the amendments will remove any exemptions from financial security, increase

financial security amounts to be consistent with actual plug and abandonment costs and establish periods for review of wells in future utility status.

Title 43
NATURAL RESOURCES
Part XIX. Office of Conservation—General Operations
Subpart 1. Statewide Order No. 29-B
Chapter 1. General Provisions
§101. Definitions

A. Unless the context otherwise requires, the words defined in this Section shall have the following meanings when found in this order.

Agent—the commissioner, the director of the Engineering Division, any of the district managers, or any other designee.

Department—the Department of Natural Resources, Office of Conservation of the state of Louisiana.

District Manager—the head of any one of the districts of the state under the Engineering Division, and as used, refers specifically to the manager within whose district the well or wells are located.

Inactive Well—an unplugged well that has been spud or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), amended by the Department of Natural Resources, Office of Conservation, LR 41:

§104. Financial Security

A. Unless otherwise provided by the statutes, rules and regulations of the office of conservation, financial security shall be required by the operator of record (operator) pursuant to this Section for each applicable well as further set forth herein in order to ensure that such well is plugged and abandoned and associated site restoration is accomplished.

1. Permit to Drill

a. On or after the date of promulgation of this Rule, the applicant for a permit to drill must provide financial security, in a form acceptable to the commissioner, for such well as provided below, within 30 days of the completion date as reported on the form comp or Form WH-1, or from the date the operator is notified that financial security is required.

2. Amended Permit to Drill/Change of Operator

a. Any application to amend a permit to drill for change of operator must be accompanied by financial security as provided below or by establishing a site specific trust account in accordance with R.S. 30:88, prior to the operator change

3. The financial security requirements provided herein shall apply to class V wells as defined in LAC 43:XVII.103 for which an application for a permit to drill or amended permit to drill is submitted on and after July 1, 2000, at the discretion of the commissioner.

B. Compliance with this financial security requirement shall be provided by any of the following or a combination thereof:

1. certificate of deposit issued in sole favor of the Office of Conservation in a form prescribed by the commissioner from a financial institution acceptable to the commissioner. A certificate of deposit may not be withdrawn, canceled, rolled over or amended in any manner without the approval of the commissioner; or

2. a performance bond in sole favor of the office of conservation in a form prescribed by the commissioner issued by an appropriate institution authorized to do business in the state of Louisiana; or

3. letter of credit in sole favor of the office of conservation in a form prescribed by the commissioner issued by a financial institution acceptable to the commissioner;

4. a site specific trust account in accordance with R.S. 30:88.

C. Financial Security Amount

1. Land Location

a. Individual well financial security shall be provided in accordance with the following.

Measured Depth	Amount
< 3000'	$ 7 per foot
3001-10000'	$4 per foot
> 10001'	$5 per foot

b. Blanket financial security shall be provided in accordance with the following.

Total Number of Wells Per Operator	Amount
≤ 10	$50,000
11-99	$250,000
≥ 100	$500,000

2. *Water Location—Inland Lakes and Bays*—any water location in the coastal zone area as defined in R.S. 49:214.27 except in a field designated as offshore by the commissioner.

a. Individual well financial security shall be provided in the amount of $8 per foot of well depth.

b. Blanket financial security shall be provided in accordance with the following.

Total Number of Wells Per Operator	Amount
< 10	$250,000
11-99	$1,250,000
> 100	$2,500,000

3. *Water Location—Offshore*—any water location in a field designated as offshore by the commissioner.

a. Individual well financial security shall be provided in the amount of $12 per foot of well depth.

b. Blanket financial security shall be provided in accordance with the following.

Total Number of Wells Per Operator	Amount
≤ 10	$500,000
11-99	$2,500,000
≥ 100	$5,000,000

4. An operator of land location wells and water location wells who elects to provide blanket financial security shall be subject to an amount determined by the water location requirements.

5. The amount of the financial security as specified above may be increased at the discretion of the commissioner.

D. All wells exempt from financial security prior to the promulgation of this rule shall remain exempt so long as they remain with their current operator. A change of name by an operator of record through acquisition, merger, or otherwise does not preclude said successor operator from maintaining the exemption described herein.

E. The commissioner retains the right to utilize the financial security provided for a well in responding to an emergency applicable to said well in accordance with R.S. 30:6.1.

F. Financial security shall remain in effect until release thereof is granted by the commissioner pursuant to written request by the operator. Such release shall only be granted after plugging and abandonment and associated site restoration is completed and inspection thereof indicates compliance with applicable regulations or upon transfer of such well to another operator. In the event provider of financial security becomes insolvent, operator shall provide substitute form of financial security within 30 days of notification thereof.

G. Plugging and abandonment of a well, associated site restoration, and release of financial security constitutes a rebuttable presumption of proper closure but does not relieve the operator from further claim by the commissioner should it be determined that further remedial action is required.

H. In the event that an operator has previously provided financial security pursuant to LAC 43:XIX.104, such operator shall provide increased financial security, if required to remain in compliance with this Section, within 30 days after notice from the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation LR 26:1306 (June 2000), amended LR 27:1917 (November 2001), LR 41:

§137. Plugging and Abandonment

A. Schedule of Abandonment

1. Dry Holes. All wells drilled for oil or gas and found to be dry prior to or after the effective date of this order shall be plugged within 90 days after operations have been completed thereon or 90 days after the effective date of this order, whichever is later, unless an extension of time is granted by the commissioner of conservation.

2. Inactive, Future Utility Wells. All inactive wells classified as having future utility shall be plugged within five years of the date of the well becoming inactive. Failure to accurately report wells on the inactive well report shall be subject to the provisions of R.S. 30:17.

a. For wells that have been inactive for a period of four years or more on the effective date of this rule, the well shall be plugged within one year of the effective date of this Rule.

b. Penalty. If an operator chooses not to plug an inactive well in accordance with this Section for reasons of future utility, an annual penalty of $250 per well per year shall be assessed until the well is plugged.

c. For all inactive wells not already covered by financial security as required in §104, financial security shall be provided within one year of the promulgation of this Rule.

d. The commissioner of conservation may grant an extension of time or other exemption for cause.

e. An operator may submit a request to the commissioner for a schedule of abandonment as described in §137(A)(4) to assist with meeting its plugging obligations.

f. All inactive wells shall be subject to the above provisions until the well has reported production for three consecutive months.

3. Other Wells on or after Effective Date of Order

a. All wells wherein production operations or use as a service well have ceased on or after the effective date of this order shall continue to be reported on the Form DM-1-R or Form DT-1 with the appropriate notation that the well is off production or no longer in use as a service well along with the date of last production or date the service well ceased to be used; and, after six months, if such a well has not been restored to production or use as a service well, it shall thereafter be reported by the operator on the semiannual inactive well report, Form INACT WR-1 (1974) which report shall be filed with the Department of Conservation showing the status of such well as of April 1 and October 1 of each year (report to be filed no later than April 25 and October 25). Such wells shall continue to be reported on the Form DM1-R or Form DT-1 showing the date of last production or the date the well ceased to be used as a service well, together with a notation showing the well is carried on the Form INACT WR-1 (1974), Inactive Well Report, until the well is plugged and abandoned.

b. The inactive well report shall list the field, well name, well number and other pertinent data and provide an appropriate column to classify such well as having either future utility, or no future utility. If the well is classified as having future utility, operator shall specify such utility by completing the appropriate column on the form. Wells so classified shall be reviewed periodically by the district manager who, at his discretion, may require an operator to supply additional information to justify the classification.

c. All such wells classified on the inactive well report by either the operator or the district manager as having no future utility shall be plugged within 90 days from the date of such classification unless any such well is included in a schedule of abandonment approved or promulgated by the commissioner of conservation or an extension of time is otherwise granted by the commissioner of conservation. The date any schedule of abandonment is approved or promulgated or an extension of time expires shall be shown in the appropriate column on the form.

4. Schedule of Abandonment. A schedule of abandonment submitted in accordance with Subparagraph 2.e or 3.c above shall include a schedule or program for the orderly plugging of wells which should be consistent with prudent operating practices and take into account any economic considerations and other circumstances which would affect such a program of plugging wells. Any schedule of abandonment approved or promulgated by the commissioner of conservation shall be followed unless modified by the operator with approval of the commissioner. Reference to the approved schedule of abandonment shall be made on the inactive well report for each well which is included in such a program and has not yet been plugged.

5. Administrative Interpretation. For purposes of administering the heretofore mentioned paragraphs, it is understood that:

a. a wellbore which is completed in more than one common source of supply (multiple completions) shall not be considered as ceasing to produce and shall not be reported on the inactive well report as long as there is production from or operations in any completion in the wellbore;

b. wells classified as having future utility may be off production or shut-in but are considered to have future utility for producing oil or gas, or for use as a service well;

B. - H. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Adopted by the Department of Conservation (August 1943), amended (March 1974), amended by the Department of Natural Resources, Office of Conservation, LR 41:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Statement

This Rule has no known impact on small businesses as described in R.S. 49:965.6.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at the public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., December 1, 2014, at Office of Conservation, Engineering Division, P.O. Box 94275, Baton Rouge, LA, 70804-9275; or Office of Conservation, Environmental Division, 617 North Third St., Room 817, Baton Rouge, LA 70802. Reference Docket No. CON ENG 2014-11 on all correspondence. All inquiries should be directed to Daniel Henry at the above addresses or by phone to (225) 342-5570. No preamble was prepared.

Public Hearing

The commissioner of conservation will conduct a public hearing on Monday, November 24, 2014 at 9 a.m., in the LaBelle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA.

James H. Welsh
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Plug and Abandonment of Oil and Gas Wells, Financial Security, and Utility Review Status

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

The proposed rule change will have no implementation costs to the state or local governmental units. The proposed rule will increase the financial security amounts currently required by the Office of Conservation for plugging and abandoning obligations associated with the drilling of oil and gas wells and establish timelines for future utility of inactive wells held by operators. The proposed rule will also remove an exception that permitted 48 month compliant operators to not have to provide financial security. There are no costs to the Office of Conservation since the financial security will be able to be documented using existing paperwork and staff.

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

The proposed rule change may effect revenue collections of state governmental units. In the event an unplugged well is abandoned and will require site restoration, the department will access the financial security provided by the company to pay for the costs associated with the abandoned well.

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

The group directly affected by the rule change will be Exploration and Production (E&P) companies. These companies will need to provide larger amounts of financial security if a new well is permitted or if an existing well is transferred, since the compliant operator exemption will be removed.

Currently E&P companies can choose between individual well financial security and blanket well security. The proposed rule change increases the financial security required based on the factors of well depth, well location, and number of wells operated. Amounts for individual well security depend on well location (land, inland water and offshore water) and well depth. Blanket financial security amounts depend on well location and the number or wells operated by the company. The exact financial security that each E&P company that applies for a permit cannot be determined.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Gary Ross	Evan Brasseaux
Assistant Commissioner	Staff Director
1410#035	Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections
Office of Motor Vehicles

Driving Schools (LAC 55:III.151)

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 Section 151 under Chapter 1, Subchapter A, to require employees of driving schools in direct care or responsibility for minor students to submit and pass a background check. Current regulation only provides for instructors and owners supervising students to submit to and pass a background check. This regulation will ensure compliance with the Child Protection Act.

Title 55
PUBLIC SAFETY
Part III. Motor Vehicles

Chapter 1. Driver's License
Subchapter A. General Requirements
§151. Regulations for All Driver Education Providers

A. - E.4. …

5. Any employee of a driving school with direct care or responsibility for minor students or who has access to the student's personal information, shall submit to and successfully pass a background check prior to any contact with minor students. The direct care or responsibility over minor students shall consist of any contact with a minor student, including, but not limited to, picking up students for instruction, monitoring students, or driving students home. This rule applies to all driving school employees, including instructors, owners and administrative staff. Employees of driving schools who are not required to submit to a background check or have not passed a background check shall not be allowed access to minor students or their information. Driving school owners shall be required to submit a list of all employees with direct care or responsibility for minor students to DPS annually, and any time a new employee is hired, by email at ladrivingschools@dps.la.gov. Personal information includes, but is not limited to, any identifying information such as name, address, telephone number, Social Security number, parents' names, name and address of high school attended by student, and emergency contacts.

E.6. - H.10. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:402.1(A)(1), R.S. 40:1461 and R.S. 40:1462.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 38:1977 (August 2012), amended LR 41:

Family Impact Statement

The proposed rules 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.

Poverty Impact Statement

The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in R.S. 49:973. The agency has considered economic welfare factors 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 poverty.

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.

Provider Impact Statement

The proposed Rules do not impact or affect a "provider." "Provider" means an organization that provides services for individuals with developmental disabilities as defined in HCR 170 of the 2014 Regular Session of the Legislature. In particular, the proposed Rules have no effect or impact on a "provider" in regards to:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the cost to the provider to provide the same level of service;
3. the ability of the provider to provide the same level of service.

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); laura.hopes@la.gov (email). Comments will be accepted through close of business November 10, 2014.

Public Hearing

A public hearing will be held on Wednesday, November 25, 2014 at 10 a.m. at 7979 Independence Boulevard, Suite 301, Baton Rouge, LA 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: Driving Schools

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

There will be no implementation costs or savings to state or local governmental units as a result of the proposed rule change. The previous rule stated that students shall not be supervised by any person who has not undergone a background check. The purpose of the proposed rule change is to require any employee of a driving school with direct care, responsibility, contact with or access to a minor student or that student's personal information to submit to and pass a background check prior to contact with a minor student to ensure compliance with the Child Protection Act.

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

The proposed rule change may result in an increase in revenue as a result of any employees of a driving school that will now be required to undergo a background check. The background check fee of $26.50 will be used to cover the cost to perform the background check by the department.

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

Persons employed by a driving school that have not undergone a background check and have direct care of minor

students or access to the student's personal information will have to pay $26.50 for the cost of a background check

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Jill P. Boudreaux	Evan Brasseaux
Undersecretary	Staff Director
1410#020	Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue
Office of the Secretary

Louisiana Tax Delinquency Amnesty Act of 2014
(LAC 61:I.4915)

The Department of Revenue, Office of the Secretary, is exercising the provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt this Rule pertaining to the Louisiana Tax Delinquency Amnesty Act of 2014 (Acts 2014, No. 822) in accordance with the provisions of R.S. 47:1511. The Rule is needed to provide guidelines for implementing and administering installment plans for the 2014 Louisiana Tax Delinquency Amnesty Program.

The Department of Revenue has established a tax amnesty program, hereinafter referred to as "amnesty program," beginning on October 15, 2014 and ending November 14, 2014. The amnesty program shall apply to all taxes administered by the department except for motor fuel, prepaid cell phone sales tax, oil field restoration-oil, oil field restoration-gas, inspection and supervision fee and penalties for failure to submit information reports that are not based on an underpayment of tax. Amnesty will be granted only for eligible taxes to eligible taxpayers who apply for amnesty during the amnesty period on forms prescribed by the secretary and who pay or enter into an installment agreement for all of the tax, half of the interest due, all fees and costs, if applicable, for periods designated on the amnesty application. The amnesty application may include issues or eligible periods that are not in dispute. The secretary reserves the right to require taxpayers to file tax returns with the amnesty application. If the amnesty application is approved, the secretary shall waive all of the penalties and half of the interest associated with the tax periods for which amnesty is applied.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 49. Tax Collection
§4915. Louisiana Tax Delinquency Amnesty Act of 2014

A. A taxpayers' application to make installment payments of a delinquent tax and its interest, penalties, and fees shall, upon approval by the secretary, enter the taxpayer into an installment agreement. In order to continue in the amnesty program, the taxpayer must make complete and timely payments of all installment payments. For the payment to be considered timely, all installment payments must be received no later than May 1, 2015.

B. All installment agreements approved by the secretary shall require the taxpayer to provide a down payment of no less than 20 percent of the total amount of delinquent tax, penalty, interest, and fees owed to the department at the time the installment agreement is approved by the secretary. Field audit and litigation are not eligible to enter into an installment agreement.

C. Every installment agreement shall include fixed equal monthly payments that shall not extend for more than six months. Applicants seeking to enter into an installment agreement with the department shall provide the following information:

1. bank routing number;
2. bank account number; and
3. Social Security number or LDR account number.

D. An installment payment will only be drafted from an account from which the taxpayer is authorized to remit payment. All payments shall be drafted through electronic automated transactions initiated by the department. Taxpayers who cannot enter into an agreement to make payment by way of automated electronic transactions shall not be eligible for an installment agreement with the department.

E. If for any reason a taxpayer subject to an installment agreement fails to fulfill his obligation under the agreement by remitting the last installment by May 1, 2015, no amnesty shall be granted and the installment agreement shall be null and void. All payments remitted to the department during the duration of the voided installment agreement shall be allocated to the oldest outstanding tax period as a regular payment. The payment will be applied in the following order: tax, penalty and interest. The taxpayer shall be obligated to pay the entirety of the delinquent tax, along with all applicable interest, penalties, and fees.

F. A taxpayer who is approved to participate in the amnesty program who is also a party to an existing installment agreement with the department may be eligible to participate in an installment agreement under the amnesty program. Upon approval by the secretary of an installment agreement under the amnesty program, the original installment agreement with the department shall be cancelled in favor of the installment agreement under amnesty.

G. The secretary may procure tax amnesty program collection services for the administration and collection of installment agreements. The fee for such services shall be in accordance with the fees authorized in R.S. 47:1516.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47: 1511 and Acts 2014, No. 822.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of the Secretary, LR 41:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.
2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed amendment will have no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed amendment will have no known or foreseeable effect on:

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

2. The total direct and indirect effect on the cost to the provider to provide the same level of service.

3. The overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested person may submit written data, views, arguments, or comments regarding this proposed Rule to Shanda J. McClain, Attorney, Policy Services Division, by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be received no later than 5 p.m., November 24, 2014.

Public Hearing

A public hearing will be held on November 25, 2014, at 2 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Tim Barfield
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Tax Delinquency Amnesty Act of 2014

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

The proposed rule is to provide guidelines for the implementation and administration of installment agreements utilized for the payment of tax delinquencies as authorized in the Louisiana Tax Delinquency Amnesty Act of 2014. Implementation costs associated with this rule are negligible. Local governmental units are not affected by this proposal.

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

This rule provides guidelines for taxpayers who apply for tax delinquency amnesty and make application to pay the delinquency in installments. It has no effect on the amount of tax due and should facilitate the amount of state taxes collected related to the amnesty program. 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)

Taxpayers wishing to take advantage of the tax delinquency amnesty program are affected by this proposal. It is not expected that these applicants will experience any substantial costs or prolonged benefits from this proposal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is expected as a result of this proposal.

Tim Barfield	Gregory V. Albrechet
Secretary	Chief Economist
1410#051	Legislative Fiscal Office

NOTICE OF INTENT

Department of the Treasury
Louisiana Housing Corporation

Workforce Housing Initiative Program
(LAC 16:II.Chapter 9)

Under the authority of R.S. 40:600.91(A)(3), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Housing Corporation hereby adopts the Workforce Housing Initiative Program. The program will allow the Louisiana Housing Corporation to assist potential homebuyers that have a demonstrated good credit history, and sound historical savings practices but with inconsistent or unverifiable income to qualify for a fixed rate mortgage loan.

Title 16
COMMUNITY AFFAIRS
Part II. Housing Programs
Chapter 8. Workforce Housing Initiative

§901. Introduction

A.1. The Workforce Housing Initiative Program is designed to provide citizens of the state of Louisiana that have:

a. a demonstrated good credit history with a minimum credit score of at least 660;

b. accumulation of borrower's own funds for a substantial down payment. There is a minimum down payment requirement of 20 percent of the purchase price. Borrower must also have minimum of 2 months principal, interest, taxes and insurance in reserve after paying down payment, pre-paids and closing costs. No gift funds allowed;

c. consistent employment history of at least 2 years in current profession; and

d. stated income at a level that is typical of the borrower's profession;

2. to purchase a home for primary residence occupancy utilizing the Workforce Housing Initiative Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.600.86 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Corporation, LR 41:

§903. Definitions

A. Notwithstanding the definitions set forth in the LAC 16:I.301, the following terms, when used in this Chapter, are defined as follows.

Annual Family Income—stated annual income as reported by the borrower, not to exceed those incomes typical of the borrower's profession. Borrower(s) annual income as reported in the last two years complete tax returns

may not exceed $99,000. Income will be from all sources and before taxes or with-holding, of all members of a family living in a housing unit.

Borrower—an individual or family applying to receive mortgage funding under the Workforce Housing Initiative Program.

Housing Unit—living accommodations intended for occupancy by a single family, consisting of one to two units, and which will be owned by the occupant thereof. One-two unit principal residences that are detached structures, condominiums, town homes/planned unit development or duplexes subject to Fannie Mae/Freddie Mac guidelines

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.600.86 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Corporation, LR 41:

§905. Eligible Borrowers

A. Borrowers will be determined to be eligible to participate under the Workforce Housing Initiative Program if they meet the following criteria.

1. The borrower is seeking a first mortgage loan for the purchase of a housing unit in the state, whether purchasing as a first time homebuyer or a non-first time homebuyer.

2. The borrower will occupy the property as the primary residence. Borrower seeking to purchase properties for use as recreational homes, second homes, vacation homes, and/or investment properties are ineligible to participate in the program.

3. The borrower's annual household income must not exceed established income limits as defined by the provisions set forth in the LAC 16:I.303.B, which limit is currently a maximum of $99,000 per year.

4. The borrower meets the minimum credit score determined by the program guidelines but in no instance shall be lower than 660.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.86 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Corporation, LR 41:

§907. Processing Qualifications of Borrowers Applications

A. An application for a mortgage loan shall be processed by a Louisiana Housing Corporation designated preferred lending institution on behalf of the Louisiana Housing Corporation and on the basis of the Louisiana Housing Corporation's evaluation criteria. The lending institution shall undertake its own due diligence and other matters as may be determined to be appropriate to insure that the proposed loan is consistent in all respects with the Louisiana Housing Corporation's evaluation factors. The Louisiana Housing Corporation will also underwrite the application.

B. When processing mortgage loan applications lenders must adhere to the published acquisition cost limits and or maximum loan sizes as defined by Fannie Mae and Freddie Mac.

C. Upon completion of the processing and approval of the application but not prior to the Louisiana Housing Corporation's approval, the lending institution shall initiate a loan closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Corporation, LR 41:

§909. Interest Rates

A. The interest rates charged by the lending institution for a borrower's mortgage loan shall be monitored and adjusted as needed based on the current market rates. The corporation will post to its website at www.lhc.la.gov daily rates for the Workforce Housing Initiative Program as long as funds are available for participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.86 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Corporation, LR 41:

§911. Types of Assistance and Proscribed Use

A. Down payment and closing costs assistance is not available for the Workforce Housing Initiative Program.

B. Borrowers will pay a 1.5 percent origination fee and 1 percent discount point.

C. Borrower will pay reasonable and customary fees and closing costs.

D. Sellers concessions up to 3 percent of the sales price is permitted.

E. Maximum loan amount is $300,000 based upon current appraisal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.86 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Corporation, LR 41:

Family Impact Statement

This proposed Rule has no determinable impact on family formation, stability, and autonomy as described in R.S.49:972.

Poverty Impact Statement

This proposed Rule has no determinable impact on household income, assets, and financial security; childhood development and preschool through postsecondary education development; employment or workforce development; taxes and tax credits; or child and dependent care, housing, health care, nutrition, transportation, and utility assistance; as described in R.S.49:973.

Provider Impact Statement

This proposed Rule has no known impact on staffing level requirement or qualifications required to provide the same level of service; the total indirect effect of the cost to the providers to provide the same level of service; or the overall effect on the ability of the provider to provide the same level of service; as described in HCR170 of the 2014 Regular Legislative Session.

Public Comments

Any interested person may submit written comments regarding the contents of the proposed Rule to Brenda Evans, Program Administrator, Louisiana Housing Corporation, 2415 Quail Drive, Baton Rouge, LA 70808 or via e-mail at bevans@lhc.la.gov. All comments must be received by 4:30 p.m. November 25, 2014.

Frederick Tombar, III
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Workforce Housing Initiative Program

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

Implementation of this proposed rule will have minimal impact on the Louisiana Housing Corporation's costs as it anticipates utilizing existing resources and 6 existing staff members for the program. This proposed rule provides guidance to potential homebuyers of a new program called the Workforce Housing Initiative, to be administered by the Louisiana Housing Corporation under the authority of La. R.S. 40:600.91 (A)(3), that will provide housing assistance to qualified borrowers who meet certain qualifications, which include having demonstrated good credit history, and sound historical savings practices, but with inconsistent or unverifiable income to qualify for a fixed rate mortgage loan. The creation and operation of this program will benefit the residents of the state who otherwise might not have an opportunity to obtain financing for a home and will assist the Louisiana Housing Corporation's in the continuation of its goal of providing safe, decent, and affordable housing to Louisiana residents.

The proposed rule will have no costs or savings to local governmental units.

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

This proposed rule, which provides guidance to potential borrowers of the Workforce Housing Initiative administered by the Louisiana Housing Corporation, will have no effect on the revenue collections of state and local governmental units.

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

This proposed rule could provide up to 75 homes for families across the state, which would provide an indeterminable potential increase in local income by slightly increasing ad valorem taxes in the parishes in which the properties are built.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule would have no effect on competition or employment.

Frederick Tombar, III	Evan Brasseaux
Executive Director	Staff Director
1410#041	Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Louisiana Catch and Cook Program and Permit
(LAC 76:VII.381)

The Department of Wildlife and Fisheries hereby gives notice of its intent to establish the Louisiana Catch and Cook Program. The program will allow permitted retail food establishments to prepare certain recreational fish caught by properly licensed fisherman. Rules and regulations, penalties, terms, conditions, requirements and related matters are being proposed.

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.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sports and Commercial Fishing
§381. Louisiana Catch and Cook Program and Permit

A. The Department of Wildlife and Fisheries is authorized to establish the Louisiana Catch and Cook Program and permit pursuant to R.S. 56:317. Notwithstanding any provision of the state *Sanitary Code* or any other law or regulation to the contrary, it shall be lawful for a retail food establishment to receive and prepare any freshwater or saltwater recreational fish as defined in R.S. 56:8.

B. Any retail food establishment as defined in LAC 51:XXIII.101.A, is authorized to prepare any fish legally taken and possessed by a licensed recreational fisherman for consumption by that recreational fisherman or any person in his party. The retail food establishment must possess a Louisiana Catch and Cook Program permit issued by the department. Possession of a permit does not exempt the permittee from any other law or regulation.

C. Permittees will be required to abide by the following conditions that shall be enforced by the Department of Health and Hospitals, Office of Public Health.

1. The retail establishment shall complete, date, and have the recreational fisherman who brings the fish in for preparation sign an assumption of risk form. The completed, dated, and signed form shall be maintained at the establishment for a period of no less than ninety days. The establishment shall provide the completed forms to the state health officer upon request.

2. The retail food establishment shall receive only fish that have been cleaned, filleted, placed in clean, food-grade, single-service packaging, and properly refrigerated.

3. The retail food establishment shall inspect the fish for freshness and proper receiving temperature.

4. The fish shall be properly labeled with the date, time, and name of the recreational fisherman.

5. The retail food establishment shall store, prepare, and otherwise handle the fish separately from products being prepared for and served to the general public.

6. The retail food establishment shall store, prepare, and otherwise handle the fish in compliance with provisions of the state *Sanitary Code* (LAC 51, Part XXIII).

7. The retail food establishment shall prepare and serve the fish to the recreational fisherman or any person in his party within four hours of receipt of the fish.

8. Containers, preparation tables, cutting boards, utensils, and other food preparation equipment used to prepare and serve the fish shall be properly cleaned and sanitized in accordance with provisions of the state *Sanitary Code* (LAC 51, Part XXIII) prior to use preparing foods to serve to the general public.

9. The fish shall be served directly to the recreational fisherman or any person in his party immediately upon the completion of cooking and shall not be served to the general public.

D. Permits may be obtained at no cost, from the Department of Wildlife and Fisheries or any authorized method. The permit is valid for one calendar year, beginning on January 1 and expiring on December 31 of the same calendar year. The permit may be obtained at any time of the year until November 15 for the current license year. A permit obtained on or after November 15 of the current license year shall be valid for the remainder of the current license year and expires on December 31 of the immediately following license year. The Department of Wildlife and Fisheries shall provide the names and locations of each participating retail food establishment to the Department of Health and Hospitals, Office of Public Health upon request.

E. Permits may be suspended or revoked by the Department of Wildlife and Fisheries for any violation of the rules and regulations of this program or on the written recommendation of the Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:317.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 41:

Family Impact Statement

In accordance with Act 1183 of 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).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Written comments may be addressed to Robert Bourgeois, Biologist DCL-B, Office of Fisheries, Department of Wildlife and Fisheries, P.O. Box 98000, Baton Rouge, LA 70898-9000 or via e-mail at rbourgeois@wlf.la.gov no later than 4:30 p.m., Wednesday, December 3, 2014.

Billy Broussard
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Catch and Cook Program and 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.

Pursuant to Act 577 of 2014, the proposed rule change creates the Louisiana Catch and Cook Program, making it lawful for permitted food retail establishments to prepare and serve fish harvested recreationally, but only for the recreational fisherman who caught the fish. This rule change will not allow food retail establishments to sell recreationally harvested fish to the general public. In addition, the rule changes set the requirements for the permit that participating restaurants must hold. Obtaining the permit will not require a fee.

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 policy described in the proposed rule is expected to have a positive effect on the revenues and incomes of restaurants that choose to participate. Restaurants may earn extra revenue by preparing fish on behalf of the anglers who harvest them. This policy may especially benefit nonresident anglers who may more readily be able to consume their fish when fresh by having them prepared in Louisiana within hours of harvest rather in some other state at a later date.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Bryan McClinton
Undersecretary
1410#052

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: January-September 2014

LAC Title	Part #.Section #	Action	Location: Month	LR 40 Page#
4	V.Chapter 15 (PPM)	Amended	June	1052
	V.Chapter 47 (PPM)	Adopted	Sept.	1646
7	XIII.Chapters 1-11	Amended	April	743
	XIII.107,145,303	Repealed	April	743
	XIII.Chapter 7	Repromulgated	May	992
	XV.127	Amended	July	1308
	XV.123,303,307-313,315,319-323	Amended	Aug.	1516
	XV.301	Adopted	Aug.	1516
	XV.325,327	Repealed	Aug.	1516
	XV.Chapters 5-7	Repromulgated	May	926
	XXI.Chapters 1-23	Repromulgated	May	926
	XXIX.Chapter 1	Amended	April	757
10	XV.1303,1315 (HCR No. 3)	Amended	June	1225
	XIX.Chapters 1-3	Amended	July	1387
13	I.701-749	Amended	Mar.	490
	I.751	Adopted	Mar.	490
	I.Chapter 29	Amended	Aug.	1524
	I.2901-2905,2911	Amended	Jan.	49
	I.2913,2915	Adopted	Jan.	49
	III.101-115	Amended	Feb.	264
	III.131-145	Repealed	Feb.	264
19	VII.109,309	Amended	Feb.	273
	VII.7713,8713	Amended	Feb.	274
22	I.341	Amended	May	1010
	I.341	Repromulgated	June	1104
	V.101	Repealed	Jan.	57
	XI.108	Repealed	Jan.	57
	XI.511,701,705,1115,1301	Amended	Jan.	57
	XI.513,1113,1115	Amended	Aug	1528
	XI.513,1113,1115	Repromulgated	Sept.	1695
	XI.903	Amended	Mar.	527
	XI.904-909	Repealed	Mar.	527
25	I.Chapter 13	Adopted	Sept.	1679
28	III.901	Amended	Sept.	1687
	III.2301	Adopted	Sept.	1687
	IV.301,703,1701,1703	Amended	Jan.	53
	IV.301,1903	Amended	Feb.	281
	IV.701,705,805,1903	Amended	May	1002
	IV.1805	Amended	Jan.	52
	XXXIX.503	Amended	July	1332
	XXXIX.503,701,703	Amended	April	765
	XLI.1501	Adopted	July	1333
	XLV.105,107,307,701,1301	Amended	May	1001
	LXXIX.121	Amended	April	766
	LXXIX.2102	Amended	Feb.	275
	LXXIX.2102,2109,Chapter 23	Amended	Sept.	1682
	LXXXIII.301,303,409,413,517,521,603	Amended	July	1313
	LXXXIII.303,1101,1102,4301,4311	Amended	April	760
	LXXXIII.611,613,1301,2301,3101	Amended	July	1313
	LXXXIII.3301,3303,4101,4301,4317	Amended	July	1313
	CXI.113	Adopted	May	993
	CXI.701,3501	Amended	July	1319
	CXI.2209	Adopted	July	1319
	CXIII.2509	Amended	July	1320
	CXV.701,2301,2303	Amended	April	763
	CXV.Chapter 23	Amended	May	994
	CXV.2314	Amended	Feb.	275
	CXV.2317	Repromulgated	Aug.	1528
	CXV.2317,2318	Amended	July	1328
	CXV.2318	Amended	Sept.	1679
	CXXXI.Chapters 2,3,6	Amended	Feb.	276
	CXXXI.243	Amended	Sept.	1680
	CXXXI.Chapter 5	Amended	July	1329
	CXXXIX.103,105,505,1101,1103,1303	Amended	July	1320
	CXXXIX.512	Amended	April	761
	CXXXIX.1503,1903,1905,2301,2303,2713	Amended	July	1320
	CXXXIX.2907	Repealed	July	1320
	CXXXIX.2909	Amended	July	1320
	CXLVII.303,325	Amended	April	761
	CLIII.501	Amended	Mar.	498
	CLV.303,311,501,505,703,705,1103,1107	Amended	Mar.	498
	CLV.1109	Amended	Mar.	498
28	CLVII.Chapters 5 and 7	Amended	April	762
	CLXIII.101,201,301,303,305	Adopted	July	1325
31	II.105	Amended	Feb.	372
33	III.311	Amended	April	779
	III.506,507,2160,3003,5116,5122,5311	Amended	July	1333
	III.711,918	Amended	Sept.	1689
	III.2701-2707,2711-2725,2735,2739,2799	Amended	Mar.	500
	III.2741	Adopted	Mar.	500
	III.5151	Amended	Mar.	518
	III.5901	Amended	July	1333
	V.105,109	Amended	July	1336
	V.4999	Amended	Sept.	1691
	V.10303,10309	Amended	Feb.	371
	VII.303,407,513,517,519,527,709,717,719	Amended	Feb.	292
	VII.1303,1399,10313	Amended	Feb.	292
	IX.Chapter 21	Amended	April	767
	IX.4901,4903	Amended	Sept.	1692
	XV.102,304,322,324,328,399,460,465,499	Amended	Feb.	282
	XV.102,304,322,328,410,417,431,499,573	Amended	July	1338
	XV.713,763	Amended	July	1338
	XV.717,729,731,732,735,1302	Amended	Feb.	282
34	V.Chapters 3-33	Repromulgated	July	1346
35	I.1797	Amended	Mar.	528
37	XI.2100,2101,2103,2105,2107,2108,2109	Amended	Sept.	1702
	XI.2106,2113	Adopted	Sept.	1702
	XI.2111	Amended	Sept.	1702
	XIII.Chapter 51	Amended	April	795
	XIII.5101,5117,5119	Adopted	April	795
40	I.271	Amended	June	1163
	I.306,307,4119,4339,5101,5127,5157,5315	Amended	Feb.	374
	I.2001-2011,2015-2023,2103,2119,2203	Amended	June	1119
	I.2217,2303,2317	Amended	June	1119
	I.5321,5399	Amended	Feb.	374
	I.6631	Amended	Feb.	386
	IV.111	Amended	Feb.	374
	IV.303,364	Adopted	Feb.	374
	IV.317	Adopted	Mar.	549
	IV.365	Repealed	June	1118
	IV.371	Amended	June	1118
	IV.375	Adopted	Mar.	548
	IV.377	Adopted	April	806
42	III.120	Amended	July	1379
	III.401	Amended	July	1381
	III.2117,2325	Amended	July	1380
	XI.Chapter 24	Amended	June	1108
	XI.Chapter 24	Repromulgated	July	1381
	XI.2405	Amended	July	1384
	XI.2405,2424	Amended	June	1105
	XI.2407,2424	Amended	June	1106
	XI.2409,2424	Amended	June	1107
	XI.2413 and 2424	Amended	July	1384
	XI.2415	Amended	June	1106
	XI.2415 and 2424	Amended	July	1386
	XI.2424	Amended	July	1385
43	I.724	Amended	Jan.	88
	I.724	Amended	May	1010
	XVII.Chapter 3	Adopted	Feb.	342
	XVII.Chapter 33	Adopted	Feb.	316
46	I.1315	Amended	Sept.	1693
	XXV.117,119,307,315,319,703,705,905,	Amended	Feb.	303
	XXV.907,911	Amended	Feb.	303
	XXVII.321,322,601,603	Adopted	April	781
	XXXIII.1202,1203	Amended	May	1006
	XXXIII.1206	Adopted	Aug.	1529
	XXXIII.Chapter 15	Amended	June	1094
	XXXIII.1508	Amended	Sept.	1696
	XXXIII.1709	Amended	April	783
	XXXIII.1809	Amended	May	1005
	XXXIV.Chapters 1-5	Repealed	Feb.	369
	XL.119,121,703,705,707	Amended	May	1003

LAC Title	Part #.Section #	Action	Location: Month	LR 40 Page#
46	XL.122	Adopted	May	1003
	XLIII.1001	Amended	Sept.	1694
	XLV.Chapters 2, 27, and 58	Adopted	July	1370
	XLVII.3341	Amended	Sept.	1696
	XLVII.Chapter 45	Amended	Jan.	59
	LIII.Chapter 29	Amended	June	1095
	LXI.707,1305,1509	Amended	July	1388
	LXIX.Chapter 1	Amended	Feb.	301
	LXXX.703,705	Amended	May	1005
	LXXXV.301,303,307,700,702,801,803,816	Amended	Feb.	307
	LXXXV.1103,1200,1201	Amended	Feb.	307
48	I.Chapter 19	Amended	Jan.	84
	I.Chapter 50	Amended	May	1007
	I.Chapter 95	Adopted	June	1099
	I.Chapter161	Amended	Aug.	1522
50	I.Chapter 21	Adopted	April	784
	I.Chapters 31 and 33	Amended	Feb.	310
	I.3103,3105	Amended	June	1096
	I.3303,3503	Amended	Jan.	66
	I.8341-8349	Amended	Jan.	83
	I.8345	Repealed	Jan.	83
	II.20003	Amended	Mar.	541
	II.20010	Amended	April	794
	II.20025	Adopted	April	793
	II.20027	Adopted	Mar.	541
	III.20305	Amended	Mar.	545
	III.20509	Amended	May	1008
	V.107	Adopted	Aug.	1530
	V.113	Adopted	June	1104
	V.551	Amended	Feb.	312
	V.Chapter 9	Amended	Feb.	312
	V.901-905,15105	Adopted	Feb.	315
	V.1125	Amended	Mar.	541
	V.1301-1305,1309	Amended	Sept.	1697
	V.1307	Repealed	Sept.	1697
	V.2501,2705,2707	Amended	April	790
	V.2701	Repealed	April	790
	V.5311,5511,5711,5911,6113	Amended	Mar.	542
	V.5313,5317,5513,5517,5713,5719,6115	Amended	Feb.	313
	V.5315,5515,5717,5915,6117	Amended	Sept.	1699
	V.5319,5519,5715,6127	Amended	Feb.	314
	V.6119	Amended	Feb.	313
	IX.15109	Adopted	Aug.	1533
	IX.15151,15153	Adopted	Mar.	544
	XI.103,301	Amended	Aug.	1533
	XI.16301,16701	Amended	Jan.	82
	XV.6905	Amended	May	1007
	XV.10505,10701	Amended	Sept.	1700
	XV.10505,10701	Amended	Sept.	1701
	XV.Chapter 111	Repealed	Sept.	1701
	XV.Chapter 119	Repealed	Sept.	1700
	XV.Chapter 161	Repealed	Aug.	1532
	XV.Chapter 163	Adopted	April	794
	XV.Chapters 251-257	Adopted	June	1097
	XXI.Chapter 1	Adopted	June	1098
	XXI.2301	Amended	April	791
	XXI.5717,5719	Adopted	Jan.	81
	XXI.6101	Amended	Jan.	81
	XXI.8101,8307,8313,9501	Amended	April	791
	XXI.8329,8601	Adopted	April	791
	XXI.11107	Amended	Mar.	539
	XXI.11107	Amended	Mar.	540
	XXI.11303,12101	Amended	Jan.	67
	XXI.13701-13709,13901-13929,14101	Amended	Jan.	68
	XXI.13931-13937	Adopted	Jan.	68
	XXI.14301	Amended	Jan.	68
	XXV.701	Amended	May	1006
	XXVII.325,353	Amended	July	1379
	XXVII.327,355	Adopted	Aug,	1530
	XXIX.123,991	Amended	Jan.	82

LAC Title	Part #.Section #	Action	Location: Month	LR 40 Page#
50	XXIX.993	Adopted	Jan.	82
	XXXIII.1701	Adopted	Sept.	1697
	XXXIII.Chapter 161	Adopted	Aug,	1529
51	IX.Chapter 3	Amended	May	1009
	XXIII.4513,4523	Amended	May	1008
52	I.1703	Amended	Sept.	1678
55	I.1575	Amended	Feb.	370
	I.Chapter 19	Amended	April	797
55	I.2103,2107,2109,2117	Amended	June	1111
	I.2106	Adopted	June	1111
	III.Chapter 1	Amended	Jan.	90
	VII.321	Amended	June	1114
	VII.323	Amended	June	1112
	VII.331	Adopted	June	1113
	VII.505,509	Amended	June	1113
	VII.Chapter 31	Amended	June	1114
61	I.1401	Amended	Jan.	91
	III.2505	Adopted	April	801
	V.101,304,703,907,1103,1307,1503,2503	Amended	Mar.	528
	V.3101	Amended	Mar.	528
67	III.1213,1229,5703-5709,5713-5729	Amended	Sept.	1675
	III.1259,5351	Amended	Aug.	1520
	III.1907,1987	Amended	July	1311
	III.5124	Adopted	Jan.	49
	III.5599	Adopted	April	759
	III.5727	Repealed	Sept	1675
	III.Chapter 73	Amended	Sept.	1674
	III.7302-7305,7311,7315,7317	Amended	Feb.	243
	III.7331-7335	Amended	Feb.	243
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Potpourri

POTPOURRI

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Structural Pest Control Commission

Substantive Changes Public Hearing—Hydraulic Injection
(LAC 7:XXV.141)

Under the enabling authority of R.S. 3:3366, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, and the Structural Pest Control Commission published a Notice of Intent in the June 20, 2014 edition of the *Louisiana Register* to adopt these rules and regulations for the implementation of hydraulic injection as an approved method of trench and treat for minimum specifications for termite control work (LR 40:1165-1166).

The Department and the Commission conducted a public hearing on July 23, 2014 to solicit comments and testimony on the proposal. As a result of the consideration of those comments and testimony received, the department and the commission propose to amend certain portions of the proposed Rule. In response to a request to define "hydraulic injection", a proposed definition of the term is inserted within Section 101.B. In addition, verbiage of the remaining amendments is corrected to accurately reflect the wording of language originally approved by the Commission.

The original proposal is resubmitted, as revised, for publication in the Potpourri section of the *Louisiana Register*. The Legislative Fiscal Office has evaluated the impact of the proposed revisions of the original proposal and has opined that no fiscal or economic impact will result from the suggested revisions proposed in this notice.

Public Hearing

In accordance with R.S. 49:968(H)(2) of the Administrative Procedure Act, a public hearing on these proposed revisions to the original proposal is scheduled for Wednesday, November 26, 2014 at 9 a.m. in the Veterans Memorial Auditorium, Louisiana Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806-4248. At that time, all interested persons will be afforded an opportunity to submit data, opinions, and arguments, either orally or in writing, regarding the proposed action. The deadline for receipt of all comments is 12 noon that same day.

Title 7
AGRICULTURE AND ANIMALS
Part XXV. Structural Pest Control
Chapter 1. Structural Pest Control Commission
§101. Definitions

A. The definitions in R.S. 3:3362 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part.

* * *

Household Pest—all species of insects and other pests which infest residences and other types of buildings and their immediate premises, such as cockroaches, flies fleas, mosquitoes, clothes moths, spiders, carpenter ants, carpenter bees, rodents and so forth, but does not include wood-destroying insects.

Hydraulic injection – the non-trenching application of a termiticide mixture by high pressure into the soil.

Label—the written, printed or graphic matter on or attached to a pesticide or device or any of its containers or wrappers.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3362 and R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 31:26 (January 2005), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 32:796 (May 2006), repromulgated LR 32:1015 (June 2006), amended LR 33:39 (January 2007), LR 35:204 (February 2009), LR 35:1468 (August 2009), LR 37:272 (January 2011), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:300 (February 2013), LR 41:

§141. Minimum Specifications for Termite Control Work

A. - B.4. …

5. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use.

C. - C.8.b. …

c. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

C.9. - D.1.b. …

c. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

D.2. - E.1.b. …

c. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and

labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

E.2. - K.7.e. …

f. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

8. - 8.b.…

c. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

K.9. - L.1.c.iii. …

d. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

L.2. - 2.a. …

b. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

L.3. - M.2.a. …

b. rod under or drill through any slab(s) adjoining or abutting the slab and treat all areas beneath adjoining or abutting slab(s) as per label and labeling instructions. When any slab(s) is drilled, the holes shall be no more than 18 inches (unless label requires closer distance) apart along the above stated areas;

c. In lieu of trench and treat, a commission approved method of hydraulic injection shall be used in conjunction with an approved termiticide with label and labeling for hydraulic injection use. Hydraulic injection shall be performed around the slab to form a treatment zone.

3. - 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), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:301 (February 2013), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:1413 (June 2013), 41:

Mike Strain, DVM
Commissioner

1410#037

POTPOURRI

Department of Health and Hospitals
Board of Pharmacy

Prescriptions (LAC 46:LIII.2511)

Editor's Note: The following Potpourri document was omitted from a scheduled September 20, 2014 publication date in the *Louisiana Register* due to a production error. The Potpourri document addresses proposed revisions to a June 20, 2014 Notice of Intent, *Louisiana Register*, pages 1200-1202, and subsequent public hearings. An October 30, 2014 final public hearing is scheduled herewith.

In accordance with the provisions of the Administrative Procedure Act (La. R.S. 49:950 *et seq.*) and the Pharmacy Practice Act (La. R.S. 37:1161 *et seq.*), the Board of Pharmacy published its Notice of Intent in the June 2014 edition of the Louisiana Register, specifying its proposal to amend §2511 of its rules to update the requirements for prescription forms and to codify contemporary practice standards for the minimum data set for prescriptions. As indicated in the notice, the Board conducted a public hearing on July 28 to receive comments and testimony on the proposal.

During the Board's consideration of those comments and testimony at its subsequent meeting on August 6, they agreed with a request to revise the original proposal by amending Paragraph E relative to electronic prescription forms, more specifically by deleting the references to a check box and a formatted single signature line as well as by adding an additional phrase prohibiting generic interchange. The proposed revision is noted below.

The Legislative Fiscal Office has evaluated the impact of the proposed revisions of the original proposal and has opined the suggested revisions would not adversely increase any cost to the stakeholders.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LIII. Pharmacists
Chapter 25. Prescriptions, Drugs, and Devices
Subchapter B. Prescriptions
§2511. Prescriptions

A. - D. …

E. Electronic Prescriptions

1. …

2.. The pharmacist shall not select an equivalent drug product when the prescriber indicates "Dispense as Written", "DAW" or "Brand Medically Necessary" and transmits his electronic signature. Otherwise, the pharmacist may select an equivalent drug product, provided the patient has been informed of, and consents to, the proposed cost saving interchange.

F. …

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 29:2102 (October 2003), effective January 1, 2004, amended LR 41:

Public Comments

Interested persons may submit written comments to Malcolm J. Broussard, Executive Director, Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, Louisiana 70809-1700. He is responsible for responding to inquiries regarding this proposed rule as well as these proposed revisions to the original proposal.

Public Hearing

A public hearing on these proposed revisions to the original proposal is scheduled for Thursday, October 30, 2014 at 9 a.m. in the Board office. 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 the receipt of all comments is 12 noon that same day.

Malcolm J. Broussard
Executive Director

1410#017

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
W. G. Lord	Grogan	S	W G Lord et al A	001	71880
H. C. Lessenger	Caddo Pine Island	S	Muslow A	003-A	36876
Cajun Operating, Inc.	Cankton, North	L	Susan Boagni Gardner	002	47595
Cajun Operating, Inc.	Cankton, North	L	S B Gardner A	001	152065
Cajun Operating, Inc.	Cankton, North	L	S B Gardner A	002	153788
Cajun Operating, Inc.	Cypress Island	L	G Hulin	1	223862
Debbie Carroll	Big Creek	M	T Smith	001	172692
Debbie Carroll	Big Creek	M	T Smith	002	172693
Debbie Carroll	Big Creek	M	T Smith	003	172877
Debbie Carroll	Big Creek, South	M	Ollie Smith et al	001	179160
Andries Bros. et al	Pendleton-Many	S	Derr	001	96933
Worth Exploration Co	Cowpen Creek	L	Louise Davis et al	001D	100827
Edwin A. Epstein, Jr.	Mount Common Church	L	Bennett	001	211407
KCM Management, Inc.	Bayou Des Allemands	L	CIB O Co Ra Sua; Simoneaux	005-ALT	34609
KCM Management, Inc.	Bayou Des Allemands	L	S J Simoneaux	003	46501
KCM Management, Inc.	Bayou Des Allemands	L	CIB O Co Ra Sua; Simoneaux	010	51300
KCM Management, Inc.	Bayou Des Allemands	L	S J Simoneaux	012	56972

James H. Welsh
Commissioner

1410#021

POTPOURRI

Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Underwater Obstruction—Latitude/Longitude Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 0 claims in the amount of $.00 were received for payment during the period September 1, 2014-September 30, 2014.

There were 0 paid and 0 denied.

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

1410#030

POTPOURRI

Department of Public Safety and Corrections
Oil Spill Coordinator's Office

Calcasieu River Oil Spill—Notice of Intent
To Conduct Restoration Planning

Action: Notice of Intent to Conduct Restoration Planning (NOI)

Agencies: Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Coastal Protection and Restoration Authority of Louisiana (CPRA); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); Louisiana Department of Wildlife and Fisheries

(LDWF); National Oceanic and Atmospheric Administration (NOAA); and the U.S. Department of the Interior (DOI), represented by the U.S. Fish and Wildlife Service (USFWS), collectively referred to herein as the "Trustees".

Authorities: The Oil Pollution Act of 1990 (OPA) (33 USC § 2701 et seq.) and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (R.S. 30:2451 et seq.) are the principal federal and state statutes, respectively, authorizing federal and state agencies and tribal officials to act as natural resource trustees for the recovery of damages for injuries to natural resources and services resulting from oil spills in Louisiana. In accordance with OPA and OSPRA, the Trustees have determined that impacts to natural resources and services resulting from the unauthorized discharge of oil from Citgo Petroleum Corporation's Lake Charles, Louisiana Manufacturing Complex (the "facility") into the Calcasieu Estuary beginning on or about June 19, 2006 (NRDA case file # LA2006_0621_0846 [Calcasieu River 2006]), referred to herein as the "Incident," warrants conducting a Natural Resource Damage Assessment (NRDA) that will include restoration planning. Citgo Petroleum Corporation (Citgo) is the Responsible Party and therefore is liable for natural resource damages resulting from the Incident.

Purpose: Based on determinations required by 15 CFR §§990.41(a) and 990.42(a), and in accordance with the regulations for OPA at 15 CFR § 990.44 and OSPRA at LAC 43:XXIX.123, the Trustees are issuing this NOI to inform the public that they are proceeding to the restoration planning phase of the NRDA and have opened an Administrative Record (AR) pursuant to 15 CFR. §990.45 and LAC 43:XXIX.127. The AR is available to the public will be augmented with additional information over the course of the NRDA process. The Trustees intend to assess injuries to natural resources and services resulting from the Incident and identify restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of those injured or lost natural resources and services.

Summary Of Incident: On June 19, 2006, two wastewater storage tanks at Citgo's facility overflowed and discharged slop oil into a secondary containment area surrounding the two tanks. Upon failure of the secondary containment, the slop oil was discharged into the Calcasieu Estuary, including Indian Marais, the Calcasieu River, Calcasieu Lake, and other surrounding water bodies. Natural resources within the Calcasieu Estuary were exposed to slop oil as a result of the Incident.

The Calcasieu Estuary contains natural resources that provide services to the public. These natural resources and services have been exposed to oil and have experienced injury, including mortality. Natural resources and services potentially injured or lost as a result of the Incident and the associated response effort may include, but are not limited to, coastal herbaceous wetlands and associated benthos, beaches, shorelines, aquatic organisms, birds, wildlife, and recreation.

The Trustees began the pre-assessment/field investigation phase of the NRDA in accordance with 15 CFR. §990.43 and LAC 43:XXIX.117 to determine if they had jurisdiction to pursue restoration under OPA and OSPRA, and, if so, whether it was appropriate to do so. During the pre-assessment phase, the Trustees collected and analyzed, and are continuing to analyze, the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction and/or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated emergency restoration and assessment activities as part of the restoration planning phase. Activities included, among other things, data collection about oiled habitats and wildlife, information about impacts to recreation as a result of the Incident, and collection of dead fish and wildlife.

Under the NRDA regulations applicable to OPA and OSPRA, the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning (NOI) if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met. This NOI announces that the Trustees have determined to proceed with restoration planning to fully evaluate, assess, quantify, and develop plans for restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured natural resources and losses resulting from the Incident. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including services, and to determine the need for, and the type and scale of restoration alternatives.

Determinations

Determination of Jurisdiction: The Trustees have made the following findings pursuant to 15 CFR. §990.41:

1. The Incident resulted in the discharge of oil into or upon navigable waters of the United States. Such occurrence constitutes an "incident" within the meaning of 15 CFR. §930.30.
2. The Incident was not authorized under a permit issued pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 USC §1651, et seq.
3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under OPA.

Determination to Conduct Restoration Planning: The Trustees have determined, pursuant to 15 CFR §990.42(a), that:

1. Data collected pursuant to 15 CFR §990.43 demonstrate that injuries to natural resources have resulted from the Incident, including but not limited to coastal herbaceous wetlands and associated benthos, beaches, shorelines, aquatic organisms, birds, wildlife, and recreation.
2. The response actions did not address the injuries resulting from the Incident sufficiently to preclude restoration.
3. Feasible primary and/or compensatory restoration actions exist to address injuries from the Incident.

Based upon the foregoing determinations, the Trustees have determined to proceed with restoration planning for this Incident.

Public Participation: The Trustees invite the public to participate in restoration planning for this Incident. Public participation in decision-making is encouraged and will be facilitated through a publically available AR (described

above) and publication of public notices in the *Louisiana Register*. Opportunities to participate in the process will be provided by the Trustees at important junctures throughout the planning process and will include requests for input on restoration alternatives and review of planning and settlement documents (e.g. the Trustees will be soliciting restoration projects that aim to restore natural resources and/or services that have a nexus to the injured natural resources and/or lost services; the public will be invited to review the Draft Damage Assessment and Restoration Plan/Environmental Assessment (Draft DARP/EA) and Draft Settlement Agreement documents). Public participation is consistent with all State and Federal laws and regulations that apply to the NRDA process, including Section 1006 of the Oil Pollution Act (OPA), 33 USC §2706; the regulations for NRDA under OPA, 15 CFR Part 990; Section 2480 of OSPRA, R.S. 30:2480; and the regulations for NRDA under OSPRA, LAC 43:XXIX.Chapter 1.

For Further Information: For more information or to view the AR please contact the Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6606 (Attn: Gina Saizan).

Brian Wayne
Coordinator

1410#042

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