

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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February 28, 2018

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Re: Final Report: Proposed Adoption of Administrative Rules
Governing Licensure and Certification; CME on
Controlled Dangerous Substances (LAC 46:XLV.4001 et seq.)

Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), the Louisiana State Board of Medical Examiners respectfully submits the enclosed report on the final adoption of the captioned rules. Notice was previously published in the December 2017 edition of the *Louisiana Register*, Vol. 43, No. 12, pp. 2584-2586. The Board plans to adopt the rules by and upon publication in the April 20, 2018, edition of the *Register*.

Very truly yours,

**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**

By: _____


Vincent A. Culotta, Jr., M.D.
Executive Director

Enclosure

**FINAL REPORT RELATIVE TO PROPOSED
ADOPTION OF ADMINISTRATIVE RULES GOVERNING
CONTINUING MEDICAL EDUCATION
ON CONTROLLED DANTEROUS SUBSTANCES**
(La. Rev. Stat. §49:968(D))

By The

LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS

Submitted To The

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA SENATE,

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA HOUSE OF REPRESENTATIVES,

PRESIDENT OF THE SENATE

And

SPEAKER OF THE HOUSE OF REPRESENTATIVES

February 28, 2018

**FINAL REPORT RELATIVE TO PROPOSED
ADOPTION OF ADMINISTRATIVE RULES
GOVERNING CONTINUING MEDICAL EDUCATION
ON CONTROLLED DANGEROUS SUBSTANCES**

Feb. 28, 2018

(La. Rev. Stat. §49:968(D))

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This Report is respectfully submitted by the Louisiana State Board of Medical Examiners (the “Board”), within the Department of Health and Hospitals, pursuant to La. Rev. Stat. §49:968(D).

By Notice of Intent published in the December 20, 2017, edition of the *Louisiana Register*, Vol. 43, No. 12, pp. 2584-2586, the Board proposed to adopt rules requiring continuing medical education (CME) on controlled dangerous substances (CDS) prerequisite to licensure renewal for individuals licensed by the Board whose scope of practice includes CDS prescriptive authority *e.g.*, physicians, podiatrists, physician assistants and medical psychologists, LAC Title 46, (Professional and Occupational Standards), Part XLV (Medical Professions), Subpart 2 (Licensure and Certification), Chapter 40 (Continuing Medical Education on Controlled Dangerous Substances), Subchapter A (General Provisions), Sections 4001-4005.

The proposed rules are made necessary by Act 76 of the 2017 Regular Session of the Louisiana Legislature, which amended the Uniform Controlled Dangerous Substances Law, R.S. 40:978. Among other items, the proposed rules provide for: Scope of the Chapter (4001); Definitions (4003); the one-time CME requirement for CME; approved/qualifying CME and how to access it; an hour-for-hour credit towards the existing annual CME requirement for license renewal; CME documentation; non-compliance; an exception for non-prescribers of CDS; and resolution of conflicts with the Board’s other CME rules (4005).

Concurrently with submission of the Notice of Intent to the *Register*, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report on the proposed rules to the Senate and House Committees on Health and Welfare, the President of the Senate and the Speaker of the House of Representatives.¹ Following publication of Notice of Intent the Board did not receive

¹*Electronic Mail*, Vincent A. Culotta, Jr., M.D., Exec. Dir., La. State Bd. Med. Exam., RE: Report Relative to Proposed Rules Governing Licensure and Certification; Rules Governing CME on Controlled Dangerous Substances (Dec.7, 2017).

**FINAL REPORT RELATIVE TO PROPOSED
ADOPTION OF ADMINISTRATIVE RULES
GOVERNING CONTINUING MEDICAL EDUCATION
ON CONTROLLED DANGEROUS SUBSTANCES**

Feb. 28, 2018

(La. Rev. Stat. §49:968(D))

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any written comments or a request for public hearing during the comment period provided by La. Rev. Stat. §49:953.

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), includes as Appendix A, a photocopy of the Notice of Intent containing the full text of the proposed rules that were previously published and appeared in the December 20, 2017 edition of the *Louisiana Register*, which the Board intends to adopt and formally promulgate in the identical form as was previously published by and upon publication in the April 20, 2018 edition of the *Louisiana Register*.

* * *

to the valuation guidelines for assessments as listed in Section II. The magnitude will depend on the taxable property for which they are liable. Regardless of the guidelines adopted by the Tax Commission, all taxpayers continue to have the right to appeal the assessments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The impact on competition and employment cannot be quantified. In as much as the proposed changes in assessments are relatively small and there will no longer be any charges for the updates, any aggregate impact on competition and employment statewide will likely be minimal.

Lawrence D. Chehardy
Chairman
1712#046

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Board of Medical Examiners**

**Licensure and Certification; Continuing Medical Education
on Controlled Dangerous Substances
(LAC 46:XLV.Chapter 40)**

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq., pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, the Louisiana Podiatry Practice Act, La. Rev. Stat. §§37:621, 37:628; the Louisiana Physician Assistant Practice Act, La. Rev. Stat. §37:1360.23, the Louisiana Medical Psychology Practice Act, La. Rev. Stat. §§37:1360.51-1360.72, and in conformity with the Uniform Controlled Dangerous Substances Law, R.S. 40:978, as amended by Act 76 of the 2017 Regular Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners (Board) intends to adopt rules requiring continuing medical education (CME) on controlled dangerous substances (CDS) prerequisite to licensure renewal for health care providers licensed by the Board whose scope of practice includes CDS prescriptive authority. The proposed rules provide for: a one-time CME requirement, definitions, identify approved/qualifying CME and how to access it, and an hour-for-hour credit towards the annual CME requirement for license renewal. Such rules also provide for CME documentation, non-compliance, an exception for non-prescribers of CDS, and resolution of conflicts with the Board's other CME rules. The proposed rules are set forth here.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

**Chapter 40. Continuing Medical Education on
Controlled Dangerous Substances**

Subchapter A. General Provisions

§4001. Scope of Chapter

A. The rules of this Subchapter provide for the one-time continuing medical education (CME) requirement for controlled dangerous substances prerequisite to license renewal of an authorized prescriber, and prescribe

definitions and the procedures applicable to approved/qualifying CME, credit for satisfaction, documentation, non-compliance, an exception and conflict resolution with other CME rules of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(8), 1270(B)(6), 37:621, 37:628, 37:1360.23 and 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§4003. Definitions

A. As used in this Subchapter, the following terms and phrases shall have the meanings specified.

Authorized Prescriber—a physician, podiatrist, physician assistant, medical psychologist and any other category of health care provider as may hereafter be licensed by the board under this Part, whose scope of practice includes authority to prescribe, dispense, or administer CDS.

Board—the Louisiana State Board of Medical Examiners, as constituted under R.S. 37:1263.

Controlled Dangerous Substances or *CDS*—any substance defined, enumerated or included in federal or state statute or regulations 21 CFR §§1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations and statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(8), 1270(B)(6), 37:621, 37:628, 37:1360.23 and 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

**§4005. Continuing Medical Educational Requirement
for Controlled Dangerous Substances**

A. CME Requirement for Authorized Prescribers of CDS. Notwithstanding any other provision of this Part, every authorized prescriber seeking the renewal of a license for the first time on and after January 1, 2019, shall, as part of the CME required by this Part, and as a condition prerequisite to licensure renewal, successfully complete three hours of CME approved by the board on CDS prescribing practices (the CME requirement). Such CME shall include instruction relating to drug diversion training, best practices regarding prescribing of CDS, appropriate treatment for addiction and, for physicians, the treatment of chronic pain. The CME requirement may be satisfied by completing a three-hour CME program, three one-hour CME programs, or any other combination of CME programs totaling three-hours.

B. Approved/Qualifying Continuing Medical Education Programs. Any:

1. category 1 CME program sponsored or offered by an organization or entity approved under Sections 437, 1375, 1529.D or 3955 of this Part to sponsor or offer CME for purposes of license renewal of physicians, podiatrists, physician assistants, or medical psychologist, respectively, shall be deemed approved for purposes of satisfying the CME requirement provided:

a. the board or its designee determines the CME program adequately addresses the areas of required instruction set forth in Section 4005.A; and

b. such organization or entity is capable of submitting proof of an attendee's completion of the CME activity electronically to the board;

2. CME program developed by the board, whether category 1 or otherwise, shall be deemed approved for purposes of satisfying the CME requirement;

3. information on how to access approved, qualifying CME will be maintained by the board and made available on its website www.lsbme.la.gov.

C. CME Credit. An authorized prescriber required to complete the CME requirement shall receive an hour-for-hour credit towards the annual requirement for CME provided in this Part for license renewal.

D. Documentation:

1. authorized prescribers shall request the organization or entity sponsoring or offering the CME to submit proof of completion of the CME activity electronically to the board in a form and manner specified by the board;

2. an authorized prescriber shall maintain a record of completion of the CME activity for four years. Satisfactory evidence shall consist of a certificate or other documentation which shall, at a minimum, contain the:

- a. program title(s);
- b. sponsor(s) name;
- c. attendee's name;
- d. inclusive date or dates and location of the CME event; and
- e. documented verification of successful completion of the CME activity by stamp, signature, official or other proof acceptable to the board;

3. if more than one CME activity is taken to meet the CME requirement a record of completion of each activity shall be maintained;

4. CME which is not approved by the board shall not satisfy the CME requirement.

E. Non-Compliance; Reinstatement of Licensure. The license of an authorized prescriber:

1. who fails to comply with the CME requirement shall not be renewed by the board;

2. which has not been renewed for failure to satisfy the CME requirement may be reinstated upon application to the board, accompanied by payment of the renewal fee required by Subpart 1 of these rules, in addition to all other applicable fees and costs, together with confirmation of completion of the CME required by this Section.

F. Exception. An authorized prescriber renewing his/her license for the first time on and after January 1, 2019, may be excused from the CME requirement upon the submission of certification, in a form and manner specified by the board, attesting that he/she has not prescribed, administered or dispensed any CDS during the entire year covered by the authorized prescriber's expiring license. The certification shall be verified by the board through the Louisiana Prescription Monitoring Program Act, R.S. 40:1001 et seq. An exempted individual who subsequently prescribes, administers or dispenses a CDS shall satisfy the CME requirement as a condition to license renewal for the year immediately following that in which the CDS was prescribed, administered or dispensed.

G. Conflict. In the event of a conflict between the provisions of this Section concerning the one-time CME requirement for CDS, and those of any other Section in this Part, the provisions of this Section shall govern.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(8), 1270(B)(6), 37:621, 37:628, 37:1360.23 and 37:1360.51-1360.72.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed rules on the family has been considered. It is not anticipated that the proposed rules 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 rules 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 rules 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 rules on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed rules 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 rules 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., January 19, 2018.

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 Wednesday, January 24, 2018 at 9:30 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.

Vincent A. Culotta, Jr., M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensure and Certification; Continuing Medical Education on Controlled Dangerous Substances

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

The proposed rules will result in a one-time publication cost of \$455 for the LA State Board of Medical Examiners (BME) and a nominal workload increase that the BME will absorb using existing resources and budget authority. The BME

NOTICE OF INTENT

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

Family Planning Services (LAC 50:XV.25501)

is promulgating the proposed rules to comply with Act 76 of the 2017 Regular Session, requiring its licensees whose scope of practice includes prescribing controlled dangerous substances (CDS), to satisfy a one-time three hour continuing medical education (CME) requirement on the prescribing of controlled dangerous substances (CDS) as a prerequisite to license renewal. The BME currently has over 18,000 physicians, podiatrists, physician assistants and medical psychologists who potentially fall within the scope of the proposed rules. The proposed rules include an exception for those attesting that they have not prescribed, dispensed or administered a CDS during the entire reporting period (expiring license) from compliance, require the BME to verify the attestation through the prescription monitoring program, and retain and submit aggregate annual compliance documentation to the Senate and House Committees on Health & Welfare.

The BME anticipates devoting some administrative resources to approving programs that qualify for the CME credit, developing and processing compliance documentation, exceptions, non-compliance and reporting to the legislature. Because the majority of the information associated with these tasks will be included in and processed with improved online systems for annual license renewal, the BME will absorb the increase in administrative workload with existing personnel and resources. Publication costs associated with the proposed rules are estimated to cost the BME \$455. Otherwise, the proposed rules will not result in a material impact for the BME or local governmental units.

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

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

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

Affected licensees will need to satisfy a one-time three-hour CME requirement for CDS as a prerequisite to renewing their license for the first time on and after January 1, 2019. Authorized prescribers who do not complete the required CME course on controlled dangerous substances will not be relicensed by the BME until the requirement is satisfied. The CME must be taken during the year 2018, so that current licensees may satisfy the requirement in advance of renewing their license in 2019. Individuals licensed after January 2019 will need to satisfy the requirement before renewing their license for the first time in the year following initial license issuance. Under current rule, all authorized prescribers are required to complete a specified amount of CME annually as a prerequisite to license renewal. The proposed three hours of CME on CDS will count toward (and not in addition to) the existing CME requirement. Some providers will offer the required CME at no cost, while other providers may charge for the activity, representing a potential, though likely marginal, cost for licensees to the extent they must pay for the CME.

Furthermore, an exception is provided to those who have not prescribed, dispensed or administered a CDS during the entire year prior to license renewal. Reporting compliance or an exception to the CME requirement will be made part of the license renewal process. Therefore, the proposed rules are not anticipated to have a material effect on costs, paperwork, workload, receipts or income of authorized prescribers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition and/or employment.

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.25501 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 U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) requires that the Medicaid State Plan align with the State Plan amendment governing Medicaid expansion. In order to comply with CMS requirements, the Department of Health, Bureau of Health Services Financing proposes to amend the provisions governing family planning services to remove the limitation on office visits for physical examinations for family planning and family planning-related services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 17. Family Planning Services

Chapter 255. Services

§25501. Covered Services

A. Medicaid covered family planning services include:

1. office visits and necessary re-visits for physical examinations as it relates to family planning or family planning-related services;

2. - B.5. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 40:1098 (June 2014), amended LR 41:379 (February 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

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 a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will improve health outcomes by providing unlimited access to family planning and family planning-related services.

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 family functioning, stability and autonomy as described in R.S. 49:973 as it will reduce the financial burden for participants

Vincent A. Culotta, Jr., M.D.
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John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office