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Executive Orders

EXECUTIVE ORDER EWE-79-9

WHEREAS, the Louisiana Highway Safety Commission was created as a division of the office of the Governor by Act 275 of 1968 and Act 278 of 1977, and was subsequently transferred to the Department of Public Safety pursuant to Act 83 of 1977; and

WHEREAS, the membership of the Commission was fixed by said Acts at twenty-one members to be appointed by the Governor; and

WHEREAS, there are certain departments and officials, the functions, activities, and legal responsibilities of which involve or affect highway safety and whose experience, expertise, and guidance are invaluable to the statewide program;

THEREFORE, the membership of the Louisiana Highway Safety Commission is increased to include five ex-officio members: the Adjutant General of Louisiana, the Secretary of the Department of Public Safety, the Deputy Secretary of the Department of Public Safety, the Assistant Secretary for the Office of Highways, Department of Transportation and Development, and the Judicial Administrator of the Supreme Court of Louisiana.

IN TESTIMONY WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 25th day of September, A.D. 1979.

Edwin Edwards
Governor of Louisiana

EXECUTIVE ORDER EWE-79-10

WHEREAS, due to natural and incidental man-made catastrophes and disasters which have resulted and will continue to result from the torrential rains, high water levels and flooding of certain areas of the State of Louisiana, causing, or threatening to cause, widespread and severe damage and injury, including loss of life or property; and

WHEREAS, citizens of these areas have been or will be driven from their homes; and

WHEREAS, the state and federal governments have declared these areas a major disaster; and

WHEREAS, when such conditions exist, it is necessary and appropriate, under the Constitution and laws of this State, for the Governor to take such action as he considers necessary and appropriate to protect lives and property to the end that existing hazards, danger and delays will be decreased and hopefully eliminated; and

WHEREAS, the Chief Executive of Louisiana is required to act in the public interest in times of emergency, catastrophe, and disaster.

NOW, THEREFORE, by virtue of the powers vested in me to preserve law and order, to curtail and reduce injury and damage to persons and property resulting from catastrophe and disaster, and to expedite relief, I, EDWIN EDWARDS, acting under the authority granted to me and the duties imposed upon me by Article 4, Sections 5 (A) and (J) of the Louisiana Constitution of 1974, Act 636 of 1974 as amended by Section 1 of Act 645 of 1975 (The Louisiana Disaster Act of 1974) do hereby, and for an

indefinite period not to exceed thirty days from this date for the purposes of administering the Temporary Housing Program, suspend all provisions of any regulatory statutes prescribing the procedures for purchases of services, supplies, and equipment.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 25th day of September, A.D. 1979.

Edwin Edwards
Governor of Louisiana

AMENDMENT AND ADDENDUM TO EXECUTIVE ORDER NO. 56 of 1974

BY VIRTUE of the power vested in me and acting under the authority of Article 4, Section 5 (A) of the Louisiana Constitution of 1974, I, EDWIN EDWARDS, do hereby add the following provision to Executive Order 56 of 1974, such provision to be designated as subsection 11.4:

11.4 Educational Leave

The four higher education boards—the Board of Regents, the Board of Supervisors of Louisiana State University, the Board of Supervisors of Southern University and the Board of Trustees for State Colleges and Universities may adopt rules, procedures, or criteria for the granting of academic, educational, administrative, or sabbatical leave, with or without pay, for their respective unclassified employees. Unclassified employees of other state agencies may be granted educational leave in accordance with Civil Service rules and regulations.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 7th day of September, A.D. 1979.

Edwin Edwards
Governor of Louisiana

Emergency Rules

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

In accordance with the provisions of R.S. 40:29, the Department of Health and Human Resources, Office of Family Security, has expanded the list of drugs eligible for payment by the Medical Assistance Program. Effective October 15, 1979, persons under age twenty-one who are recipients in the Medicaid (Title XIX) Program are eligible for payment of pancreatic enzymes through the drug program. The following are the enzymes that will be covered by the program: Cotazym, Ilozyme, Ku-zyme HP, Pancrease, Pancreatin, and Viokase.

This action will allow the Medical Assistance Program the capability of providing these potentially life sustaining medications.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Family Security

In accordance with the provision of R.S. 40:29, the Department of Health and Human Resources, Office of Family Security has expanded the list of drugs for which Maximum Allowable Costs (MAC) are required by federal regulations. Effective October 15, 1979, the MAC has been established as follows: Diphenoxylate hydrochloride/atropine sulfate 2.5 mg./0.025 mg. tablet, \$0.0491 per tablet; Doxepin, 100 mg. capsule, 0.2900 per capsule; Methocarbamol, 500 mg. tablet, 0.0496 per tablet; Methocarbamol, 750 mg. tablet, 0.0640 per tablet; Oxyphenbutazone, 100 mg. tablet, 0.0847 per tablet; Penicillin G, 400 mu. tablet, 0.0237 per tablet; Penicillin G, 800 mu. tablet, 0.0640 per tablet; Sulfisoxazole, 500 mg. tablet, 0.0273 per tablet; and Tetracycline Hcl, 125 mg./5 ml. syrup, 0.0104 per ml.

In no case may a recipient be required to provide payment for any difference in a prescription price that may occur with the implementation of MACs, nor may our office use a cost which exceeds the established maximums except as follows. HEW's regulations provide that when a physician certifies that a specific brand is medically necessary for a particular patient then the MAC limitations for that medication will not apply. In this case their specific guidelines provide that:

1. the certification must be in the physician's handwriting;
2. the certification may be written directly on the prescription, or on a separate sheet which is attached to the prescription;
3. a standard phrase written on the prescription, such as "brand necessary" will be acceptable;
4. a printed box on the prescription blank that could be checked by the physician to indicate brand necessity is unacceptable;
5. a handwritten statement transferred to a rubber stamp and then stamped on the prescription blank is unacceptable.

This action will allow the Medical Assistance Program to be in compliance with federal regulation 45 CFR 19.5. These new regulations were published in the *Federal Register*, Volume 44, Number 169, page 50651. Compliance with these regulations assures continued federal financial participation in Louisiana's Medical Assistance Program.

William A. Cherry, M.D., Secretary
Department of Health and Human Resources

DECLARATION OF EMERGENCY

Department of Health and Human Resources Office of Licensing and Regulation Division of Health Planning and Development

In accordance with the provisions of the FY 1979-80 agreement between the Louisiana Department of Health and Human Resources (DHHR) and the United States Department of Health, Education and Welfare (DHEW) to conduct a program in Louisiana to review capital expenditures by health care facilities

under Section 1122 of the Social Security Act, the following rules were adopted by the Department of Health and Human Resources in its capacity as the State Health Planning and Development Agency under Public Law 93-641 and as the Designated Planning Agency under Public Law 92-603 (Section 1122).

An Emergency Rule was necessary in order that the Department of Health and Human Resources could ensure uninterrupted operation of the review of capital expenditures by health care facilities under Section 1122 of the Social Security Act. Effective September 24, 1979, this Department has adopted policies in regard to Section 1122 which will ensure continued operation of that program.

Section 1122 Guidelines

Section 1122 of the Social Security Act, as amended by Public Law 92-603, the Social Security Amendments of 1972, requires that a health facility which proposes to make a capital expenditure obtain prior approval by a designated planning agency in order to be reimbursed for expenses related to the capital expenditure under the Medicare, Medicaid, and Maternal and Child Health programs. The purpose of this provision is to assure that federal funds are not used to support unnecessary capital expenditures by health care facilities.

The state agency designated to carry out the provisions of this law in Louisiana is the Division of Health Planning and Development (DHPD), which is the state agency organized under P.L. 93-641.

In making its review of proposed capital expenditures DHPD will consult with the appropriate health systems agency in addition to the Division of Licensing and Certification and any other appropriate state agency.

For the purpose of this Section (1122), "health care facility" includes hospitals, psychiatric hospitals, tuberculosis hospitals, skilled nursing facilities, kidney disease treatment centers including freestanding hemodialysis units, intermediate care facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientists, Boston, Massachusetts.

Capital expenditures covered are those which are not properly chargeable as expenses of operation and maintenance and which exceed \$100,000 or change the bed capacity of the facility, or substantially change the services of the facility. Any questions regarding applicability of expenditures to review should be directed solely to DHPD for an official determination.

When making a determination of the total amount of any capital expenditure discussed herein, DHPD shall consider the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition, improvement, expansion or replacement of the plant and equipment with respect to which such expenditure is made.

Proposals for the acquisition of facilities or equipment by lease or comparable arrangement or through donation may be subject to review under Section 1122. DHPD should be contacted for a determination of applicability and assistance in computing amounts subject to Section 1122 review.

Any capital expenditure for which the obligation is incurred by or on behalf of a health care facility after December 31, 1972, is subject to review under these provisions.

An expenditure for which an obligation was incurred before January 1, 1973, is not subject to review requirements of Section 1122.

The statute permits an exception to any health care facility providing services as of December 18, 1970, which as of that date was committed to a formal plan of expansion or replacement as approved by the facility's board of trustees. This can only occur if

the facility spent \$100,000 or more during the three-year period ending December 17, 1970, for preliminary items on the plan including payments for studies, surveys, designs, plans, working drawings, specifications and site acquisition. In such a case, Section 1122 shall not apply to capital expenditures made in conformity with that plan. The exception shall, however, not apply to capital expenditures which are not included in the plan.

The Division of Health Planning and Development may, at its option, elect not to review certain proposed capital expenditures which have been determined to be subject to review under Section 1122 of the Social Security Act. A decision to elect not to review shall be equivalent to a determination by DHPD that such expenditure is in conformity with applicable standards, criteria or plans.

In order to be eligible for election not to review, a proposal must meet all of the following criteria:

1. There will be no substantial change in services offered by the health care facility as a result of the proposed expenditure, except that proposals costing less than \$100,000 which result in the addition or termination of a clinically related service may be considered for election not to review.

2. The bed complement of the facility will not be changed by more than ten beds or ten percent of the total number of licensed beds, whichever is less, as a result of the proposed expenditure.

3. Total costs of the proposal do not exceed \$500,000, except that in the case of a proposal for the acquisition of non-medical equipment, election not to review may be considered if total costs do not exceed \$1,000,000. Regardless of costs stipulated, the following shall apply to proposed expenditures for the acquisition of a health care facility by purchase, lease or comparable arrangement: All such proposals shall be subjected to full review under Section 1122, except that proposals for the acquisition of skilled nursing facilities and intermediate care facilities will be considered eligible for election not to review on a case by case basis.

4. The proposed expenditure is not a discrete component of a larger capital expenditure or a part of a phased project, the total cost of which would disqualify that proposal from election not to review according to the criteria set forth in this section.

DHPD may, at its option, subject any proposal to full review, including proposals which meet all of the above criteria.

A person proposing a capital expenditure by or on behalf of a health care facility, which expenditure may qualify for election not to review according to the above criteria, should submit in writing to DHPD notice of intent to make the capital expenditure. After examining the information contained in such notification, and any additional information DHPD may request, a determination will be made by DHPD whether or not to elect not to review the proposed expenditure.

If DHPD determines that such proposal shall require full review, the applicant will be notified of such decision and will be supplied with appropriate application forms to provide information adequate for full review of the proposal.

The procedures for review are as follows:

1. Any person, agency, organization, or health care facility which proposes to make a capital expenditure subject to review under the provisions of Section 1122 of the Social Security Act should request an application from DHPD.

2. DHPD will promptly send a copy of this booklet and a questionnaire to the applicant.

3. The appropriate health systems agency concerned will be notified of the proposed expenditure (and the applicant will be notified of the health systems agency covering the area in which his project is located).

4. The applicant should fill out the questionnaire in coordination with the appropriate health systems agency. When ready for submittal for review, the applicant must provide three copies of the application to DHPD and simultaneously provide twenty-five copies of the application to the appropriate health systems agency. All copies submitted must be identical.

5. An application must be received by DHPD and determined to be complete at least sixty days prior to the date upon which the applicant expects to incur an obligation to make the expenditure. If DHPD determines that the application is incomplete, the applicant will be notified within fifteen days of additional information needed. This determination is made in coordination with the appropriate health systems agency.

6. The applicant must provide additional information as requested in Part A. 5., above, again with the provision that requested information be received by DHPD at least sixty days prior to the expected date of obligation to make the expenditure.

7. The review period will not exceed ninety days unless the applicant agrees to a longer time period. The review period will begin upon receipt by DHPD of a complete application. Procedures governing incomplete applications are found in Parts 5. and 6. above.

8. DHPD will issue a press release of its receipt of the complete application.

9. DHPD will send copies of the application to the Division of Licensing and Certification and any other state agency deemed appropriate by DHPD.

10. The appropriate health systems agency (HSA) will review the application at a public meeting of an appropriate committee. Notice of the meeting will be publicized in the local newspaper. In addition, the applicant will be given sufficient notice of the date of the meeting and will be invited to attend to explain his application. The review committee will make its recommendations to the board of directors or executive committee, which body shall make the final decision of the HSA and send its findings and recommendations to DHPD.

11. The Division of Licensing and Certification and other state agencies from which comments have been requested will review the application and send their recommendations to DHPD.

12. Findings and recommendations pursuant to Parts 10. and 11. above will be received by DHPD no later than sixty days after start of the review period. In the case of an application which specifies that an obligation to make the capital expenditure will be incurred sixty days after start of the review period, DHPD will coordinate with the HSA and the Division of Licensing and Certification to establish a date by which findings and recommendations will be received by DHPD. Such date should allow sufficient time for HSA and Division of Licensing and Certification review, as well as a period for consideration of those findings and recommendations by DHPD.

13. DHPD will then complete the review and send its findings and recommendations to the applicant, the Secretary of DHEW, the HSA, the Division of Licensing and Certification, and the Secretary of the Department of Health and Human Resources of Louisiana. This step shall be completed not more than ninety days after the date DHPD has received the completed application unless the applicant has indicated an earlier date for obligation of the expenditure. However, a minimum of sixty days must be allotted for completion of the review. At an applicant's request or concurrence, the review period may be for a longer period of time as agreed.

14. DHPD will issue a news release of the final finding.

15. In the case of a negative recommendation by DHPD, the applicant may request an appeal, which request must be

made in writing and received by DHPD within thirty days after the applicant has received notice in writing of the notice of disapproval.

16. DHPD will notify the Attorney General of the State of Louisiana who is responsible for conduct of the appeal hearing.

17. The Attorney General will select a hearing date and notify DHPD, and the hearing shall be commenced within thirty days after receipt of the request for a hearing by the applicant (or later, at the option of the person requesting the hearing).

18. DHPD will notify the applicant of the hearing date.

19. DHPD will issue a news release of the hearing.

20. As soon as possible, but not later than forty-five days after the conclusion of the hearing, the Attorney General will notify the applicant, DHPD and the Regional Health Administrator (DHEW) of the appeal decision.

21. DHPD will issue a press release of the appeal decision.

Evidence of obligation to make the capital expenditure must be received by DHPD within one year after approval of the project, or the approval will expire.

As provided in the regulations, the one year approval period may be extended for up to six months at the discretion of DHPD in consultation with the HSA upon the showing of good cause by the proponent.

A progress report to DHPD on the project is required six months after approval.

As provided in the regulations, an obligation to make a capital expenditure shall be incurred not more than one year following the date of approval. An obligation shall be deemed to have been incurred by or on behalf of a health care facility or health maintenance organization:

A. When an enforceable contract is entered into by such facility or organization or by a person proposing such capital expenditure on behalf of such facility or organization for the construction, acquisition, lease or financing of a capital asset; or

B. Upon formal internal commitment of funds by such facility or organization for a force account expenditure which constitutes a capital expenditure; or

C. In the case of donated property, the date on which the gift is completed in accordance with applicable Louisiana law.

It is the sole responsibility of the proponent to keep DHPD informed of its progress during the one year approval period and to submit documentary evidence as proof that at least one of the above conditions has been fulfilled. The following conditions have been established regarding the acceptance of certain documents as proof of an obligation:

A. In the case of a construction contract, such document must be fully consummated and filed with a local clerk of court's office in accordance with applicable state law and must indicate a commencement date of not more than 180 days from the date of the contract. Failure to begin vertical construction on or before the specified starting date will result in the determination of approval to be deemed expired, if such date is beyond the one year approval period. There is no provision for extension of the 180-day period within which construction must commence.

B. In the case of a purchase or lease arrangement, a signed purchase or lease agreement with a specified time limitation of not more than 180 days when the purchase or lease is to be executed, will be accepted. If such purchase or lease is not completed on or before the 180-day period, the determination of approval will be deemed expired, if such date is beyond the one year approval period. There is no provision for extension of the 180-day period within which the purchase or lease must be completed.

C. In the case of a financial commitment, such commitment must be a documented binding commitment from a lending institution for permanent or interim financing accompanied by an acceptance signature from the proponent. Such financial commitment must have an expiration date of not more than 180 days. (Loan guarantees do not fulfill the requirements set forth above). If such commitment is not executed on or before the 180-day period, the determination will be deemed expired, if such date is beyond the one year approval period. There is no provision for extension of the 180-day period within which the financial commitment must be executed.

D. In the case of bonds, an obligation is deemed to have been incurred whenever the bonds have been approved for sale or issuance by either an election or board action of an official public body acting on behalf of a health care facility. Sale of bonds must be completed within 180 days of the issuance of approval for their sale or the determination of approval will be deemed expired, if the one year approval period has elapsed. There is no provision for extension of the 180-day period within which the sale of bonds must be completed.

If DHPD recommends that the capital expenditure not be made, the Secretary of HEW shall, in determining the federal payments to be made under Titles V, XVIII and XIX of the Social Security Act to the health care facility, ordinarily exclude certain expenses related to such capital expenditure. However, if the Secretary, after submitting the matters involved to the National Advisory Council on Health Planning and Development and after taking into consideration the recommendations of DHPD and other reviewing agencies, determines that an exclusion of expenses for a capital expenditure would discourage the operation or expansion of a health care facility (or any facility of such an organization) which has demonstrated capability to provide comprehensive health care services efficiently, effectively, and economically or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of Titles V, XVIII, and XIX, he shall include such expenses in federal payments under such titles.

When DHPD has good cause to believe that an obligation for a capital expenditure has been incurred by or on behalf of a health care facility and that timely notice of at least sixty days was not provided, DHPD shall send written notification to such health care facility, the Secretary, the Health Systems Agency in the concerned area, and all other agencies deemed appropriate by DHPD of a proposed finding that an obligation for a capital expenditure subject to review has been incurred and that timely notice was not provided. Procedures for processing such a finding shall be according to Section 100.108 (a) of the regulations, and the policy on lack of timely notice as published January 26, 1977, in the *Federal Register*, Volume 42, Number 17.

In the case of disapproved project, the applicant will be entitled to a reconsideration by DHPD of its finding: (a) whenever there is a substantial change in existing or proposed health facilities or services of the type proposed in the area; or (b) upon a substantial change in the need for facilities or services of the type proposed in the area; or (c) at any time following the expiration of three years from the date of the finding of DHPD or of its last reconsideration of such finding pursuant to this paragraph, whichever is later.

If DHPD finds, after such reconsiderations, that the facilities or services provided by the capital expenditure involved are in conformity with the applicable standards, criteria, or plans, and so notifies the Secretary of DHEW, the Secretary will include, in determining future payments under Titles V, XVIII, and XIX, expenses related to such capital expenditure. However, such expenses will be included only for payments following the date of notification to the Secretary by DHPD of its reconsideration.